

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA, and	)
STATE OF MISSOURI,	)
	)
Plaintiffs,	)
	)
CITY OF WILDWOOD, MISSOURI,	)
	)
Plaintiff-Intervenors,	)
	)
v.	)
	)
J.H. BERRA CONSTRUCTION CO.,	)
INC., JHB PROPERTIES, INC.,	)
J.H. BERRA HOLDING CO., INC.,	)
JMB No. 2, LLC, and	)
CMB RHODES, LLC	)
	)
Defendants.	)
_____	)

CONSENT DECREE

## TABLE OF CONTENTS

I.	<u>GENERAL PROVISIONS</u> .....	<u>2</u>
1.	<u>Definitions</u> .....	<u>2</u>
2.	<u>Jurisdiction and Venue</u> .....	<u>10</u>
3.	<u>Parties Bound</u> .....	<u>11</u>
4.	<u>Responsibility for Acts of Others</u> .....	<u>11</u>
5.	<u>Public Notice</u> .....	<u>11</u>
6.	<u>Agreement Not to Challenge Decree</u> .....	<u>11</u>
7.	<u>No Warranty by Plaintiffs</u> .....	<u>12</u>
8.	<u>Not a Permit Modification</u> .....	<u>12</u>
9.	<u>Headings</u> .....	<u>12</u>
10.	<u>Computation of Time</u> .....	<u>12</u>
11.	<u>Final Judgment</u> .....	<u>12</u>
12.	<u>Purpose of Decree</u> .....	<u>12</u>
13.	<u>Access</u> .....	<u>13</u>
14.	<u>Preservation of Records</u> .....	<u>14</u>
15.	<u>Authority to Sign Decree</u> .....	<u>14</u>
16.	<u>Service and Answer</u> .....	<u>14</u>
17.	<u>Notices</u> .....	<u>15</u>
18.	<u>Certification of Reports and Submissions</u> .....	<u>17</u>
19.	<u>Entire Agreement</u> .....	<u>17</u>
20.	<u>Modification</u> .....	<u>17</u>
21.	<u>Costs of Suit</u> .....	<u>17</u>
22.	<u>Request to Terminate Decree</u> .....	<u>18</u>
23.	<u>Response to Request for Termination</u> .....	<u>18</u>
24.	<u>Appendices</u> .....	<u>19</u>
II.	<u>COMPLIANCE PROGRAM</u> .....	<u>19</u>
25.	<u>Application of Compliance Program.</u> .....	<u>19</u>
26.	<u>Compliance</u> .....	<u>19</u>
27.	<u>Designation of Storm Water Compliance Managers</u> .....	<u>20</u>
28.	<u>List of Sites.</u> .....	<u>23</u>
29.	<u>Permits</u> .....	<u>24</u>
30.	<u>Storm Water Plans and Records</u> .....	<u>25</u>
31.	<u>Criteria for Grading and Clearing</u> .....	<u>29</u>
32.	<u>Criteria for Stabilization</u> .....	<u>30</u>
33.	<u>Criteria for Sediment Basins and Detention Ponds</u> .....	<u>31</u>
34.	<u>Construction Entrances and Exits</u> .....	<u>32</u>
35.	<u>Pre-Construction Inspection and Review</u> .....	<u>33</u>
36.	<u>Inspections</u> .....	<u>34</u>
37.	<u>Maintenance</u> .....	<u>35</u>
38.	<u>Site Storm Water Compliance Review and Oversight</u> .....	<u>35</u>
39.	<u>Compliance Summary Report</u> .....	<u>36</u>
40.	<u>Public Notification Signs.</u> .....	<u>36</u>

41.	<u>Storm Water Training Program</u>	<u>37</u>
42.	<u>Contractor and Storm Water Consultant Compliance</u>	<u>43</u>
43.	<u>Corporate Acquisition</u>	<u>43</u>
44.	<u>Submission of Records to Plaintiffs</u>	<u>43</u>
III.	<u>MITIGATION AND REMEDIATION</u>	<u>44</u>
45.	<u>After-the-Fact Permit</u>	<u>44</u>
46.	<u>Mitigation and Remediation at Countryshire</u>	<u>46</u>
47.	<u>Release of Bond for the Enclaves at Cherry Hills</u>	<u>47</u>
48.	<u>Investigation Costs</u>	<u>48</u>
49.	<u>Dismissal of Related Litigation</u>	<u>49</u>
50.	<u>Resolution of State Matters</u>	<u>49</u>
51.	<u>Sampling Program for Eureka Commons and Ashton Park</u>	<u>50</u>
IV.	<u>CIVIL PENALTY</u>	<u>52</u>
52.	<u>Civil Penalty</u>	<u>52</u>
53.	<u>Method of Payment</u>	<u>52</u>
54.	<u>Additional Penalty</u>	<u>53</u>
V.	<u>STIPULATED PENALTIES</u>	<u>53</u>
55.	<u>Stipulated Penalty Amounts</u>	<u>53</u>
56.	<u>Payment of Stipulated Penalties</u>	<u>54</u>
57.	<u>Accrual of Stipulated Penalties</u>	<u>56</u>
58.	<u>No Effect on Obligation to Comply</u>	<u>56</u>
59.	<u>Effect of Dispute Resolution</u>	<u>56</u>
60.	<u>Interest on Late Payment</u>	<u>57</u>
61.	<u>Non-Exclusivity of Remedy</u>	<u>57</u>
VI.	<u>FORCE MAJEURE</u>	<u>57</u>
62.	<u>Required Notification for Force Majeure</u>	<u>57</u>
63.	<u>Procedures for Extension</u>	<u>58</u>
64.	<u>Effect on Other Obligations</u>	<u>59</u>
VII.	<u>DISPUTE RESOLUTION</u>	<u>59</u>
65.	<u>Exclusive Remedy</u>	<u>59</u>
66.	<u>Informal Dispute Resolution</u>	<u>59</u>
67.	<u>Formal Dispute Resolution</u>	<u>60</u>
68.	<u>Petitions to the Court</u>	<u>61</u>
69.	<u>Effect on Other Obligations</u>	<u>62</u>
VIII.	<u>EFFECT OF SETTLEMENT</u>	<u>62</u>
70.	<u>Covenants Not to Sue by Plaintiffs</u>	<u>62</u>
71.	<u>No Effect on Third Parties</u>	<u>63</u>
72.	<u>Plaintiffs' Reservations of Rights</u>	<u>64</u>
73.	<u>No Waiver of Sovereign Immunity</u>	<u>64</u>

74.	<u>Defendants' Covenants Not to Sue</u>	<u>64</u>
APPENDIX A:	SWPPP CRITERIA	<u>A-1</u>
APPENDIX B:	PRE-CONSTRUCTION INSPECTION FORM	<u>B-1</u>
APPENDIX C:	SITE INSPECTION FORM	<u>C-1</u>
APPENDIX D:	QUARTERLY COMPLIANCE REVIEW FORM	<u>D-1</u>
APPENDIX E:	COMPLIANCE SUMMARY REPORT	<u>E-1</u>
APPENDIX F:	RELEASE BY HOMEOWNERS	<u>F-1</u>
APPENDIX G:	DISMISSAL STIPULATION	<u>G-1</u>

A. Whereas, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and the State of Missouri *ex rel.*, Jeremiah W. (Jay) Nixon, Attorney General of Missouri and the Missouri Department of Natural Resources, have filed the Complaint in this matter alleging that J.H. Berra Holding Co., Inc., J.H. Berra Construction Company, JHB Properties, Inc., JMB No. 2, LLC, and CMB Rhodes, LLC have violated the Clean Water Act, the Missouri Clean Water Law, and the regulations promulgated pursuant to those statutes, including the conditions and limitations of the Federal General Permit and the Missouri General Permit.

B. Whereas, the City of Wildwood has filed a complaint in intervention alleging violations of the Clean Water Act, Missouri Clean Water law, the Missouri General Permit, and the City Code of Ordinances.

C. Whereas, the Defendants neither admit nor deny the allegations in the Complaint and the Complaint in Intervention, and nothing in this Decree shall constitute or be construed as an admission of liability, fact or law, or of any wrongdoing on the part of any Defendant.

D. Whereas, the Parties have consented to the entry of this Decree without trial of any issues.

E. Whereas, the Parties recognize, and this Court finds by entering this Decree, that the Parties have negotiated this Consent Decree in good faith, that implementation of this Decree will avoid prolonged and complicated litigation between the parties, and that it is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law, except as expressly provided herein, and

upon consent and agreement of the parties, it is hereby ORDERED, DECREED, and ADJUDGED as follows:

I. GENERAL PROVISIONS

1. Definitions. Except as specifically provided in this Decree, the terms used in this Decree shall be defined in accordance with definitions in the Clean Water Act and the regulations promulgated pursuant to the Clean Water Act. Whenever the terms listed below are used in this Decree, the following definitions apply:

a. Action Item – a condition that requires action to be taken to achieve or maintain compliance with Storm Water Requirements, including, but not limited to, updating a SWPPP, maintaining or repairing an existing BMP, and implementing a new or modified BMP.

b. Applicable Permit – (i) the Federal General Permit if the Construction Activity takes place in a jurisdiction where the Federal General Permit is applicable; (ii) the Missouri General Permit, if the Construction Activity takes place in Missouri; (iii) in the case that the Construction Activity takes place in an Authorized State other than Missouri, the Authorized State's NPDES construction general permit; or (iv) an individual NPDES permit issued by EPA or an Authorized State for storm water discharges associated with construction, where such individual permit has been issued for the Construction Activity, including but not limited to site-specific stormwater permit issued by Missouri.

c. Authorized State – a state with an NPDES Program that has been authorized by EPA under 33 U.S.C. 1342(b) and 40 C.F.R. Part 123.

d. Best Management Practices ("BMPs") – schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or

reduce the pollution of Jurisdictional Waters. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

e. Berra Companies – J.H. Berra Holding Co., Inc., J.H. Berra Construction Co., Inc., JHB Properties, Inc., their successors and subsidiaries. A Berra Company is any one of these companies.

f. Berra Related Company – any entity that would not otherwise qualify as a Berra Company but is any one of the following entities: (i) any partnerships in which any Berra Company or combination of Berra Companies has a controlling interest; (ii) any limited partnership where any Berra Company or any combination of Berra Companies is a general partner; or (iii) any corporation or limited liability company in which at least one Berra Company or combination of Berra Companies has an interest of twenty-five percent or greater.

g. Business Day – any day other than a Saturday, Sunday, or State or Federal legal holiday.

h. City – the City of Wildwood, Missouri.

i. Clean Water Act – the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387.

j. CMB – the Defendant CMB Rhodes, LLC, a single-purpose entity formed for the purpose of developing Countryshire.

k. Company Storm Water Compliance Manager – an employee of a Berra Company designated pursuant to Paragraph 27 (Designation of Storm Water Compliance Managers) to oversee storm water compliance activities for the Berra Companies.

l. Compliance Summary Report – a report in the form attached at Appendix E and as required by Paragraph 39 (Compliance Summary Report).

m. Construction Activity – includes: (1) clearing, grading and excavation that results in land disturbance of equal to or greater than one acre; (2) the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre; or (3) any other construction activity designated by EPA or an Authorized State, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to Jurisdictional Waters pursuant to 40 C.F.R. § 122.26(b)(15)(ii). Construction Activity does not include small construction activity as that term is used in 40 C.F.R. § 122.26(b)(15)(i)(A) or (B).

n. Contractor – any contractor or sub-contractor (other than a Storm Water Consultant) that contracts with any of the Berra Companies to work at a Site except for (i) employees or contractors of a governmental or certificated public utility; or (ii) a cable company that has been awarded a franchise to operate in that jurisdiction

o. Contractor Supervisor – the person identified under Paragraph 42 (Contractor and Storm Water Consultant Compliance).

p. Corrective Action – an action taken or that is necessary to be taken to achieve or maintain compliance with Storm Water Requirements.

q. Countryshire – the housing development located at Highway N & Sommers Road in O’Fallon, Missouri 63366.

r. Date of Entry – the date this Decree is signed by the Court.

- s. Decree – This Consent Decree, including all Appendices.
- t. Defendants – JMB No. 2, LLC, CMB Rhodes, LLC and each of the Berra Companies. A Defendant is any one of these companies.
- u. Detention Pond – a dam designed to hold stormwater runoff for a prolonged time and release the water slowly to prevent downstream flooding, stream erosion and pollution.
- v. Enclaves at Cherry Hill – the housing development located at Old Manchester Road & Cherry Hills Meadows in Wildwood, Missouri 63040.
- w. EPA – the U.S. Environmental Protection Agency.
- x. Federal General Permit – the federal NPDES General Permit for Storm Water Discharges from Construction Activities issued by EPA on July 1, 2003 (68 Fed. Reg. 39087), as modified and amended, and any subsequent amendments or modifications thereto or other permits subsequently issued by EPA to implement the requirements of 40 C.F.R. Parts 122, 123 and 124 for storm water discharges from Construction Activities.
- y. Force Majeure Event – any event beyond the control of a Defendant, its contractors, or any entity controlled by such Defendant that delays the performance of any obligation under this Decree despite such Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. A "Force Majeure Event" does not include: (i) such Defendant's financial inability to perform any obligation under this Decree; (ii) such Defendant's failure to apply for a required permit or approval or to provide in a timely manner all information

required to obtain a permit or approval that is necessary to meet the requirements of this Decree;  
or (iii) failure of a Defendant to approve contracts.

z. Foxwood Estates Lake – the recreational lake located at the Foxwoods Estates Subdivision and created by the construction of a dam in a tributary to Dardenne Creek.

aa. Jurisdictional Waters – navigable waters as defined under the Clean Water Act and waters of the State as defined in the Missouri Clean Water Law.

bb. Lake Chesterfield – both of the recreational lakes within the Harbors of Lake Chesterfield Subdivision within the City, downstream from the Enclaves at Cherry Hill.

cc. Local Law – all ordinances, regulations or other laws pertaining to land disturbance, stormwater or erosion control, and subdivision ordinances to the extent they impose requirements relating to land disturbance, storm water or erosion control of a local governmental entity when the subject activity occurs within the boundaries of that local governmental entity.

dd. MDNR – Missouri Department of Natural Resources.

ee. Missouri Clean Water Law – Missouri Revised Statutes, Chapter 644.

ff. Missouri General Permit – that particular General Permit from series MOR101 through MOR109 issued by the Missouri Clean Water Commission on February 8, 2007 and any subsequent amendments or modifications thereto or other permits subsequently issued by the Missouri Clean Water Commission to implement the requirements of 40 C.F.R. Parts 122, 123 and 124 for storm water discharges from Construction Activities which applies to a particular Construction Activity.

gg. NPDES – National Pollutant Discharge Elimination System.

hh. Notice of Intent – a request for coverage under an Applicable Permit.

ii. Notice of Termination – notification that coverage under the Applicable Permit is ready for termination.

jj. Operator – any person associated with Construction Activity that meets either of the following two criteria: (1) the person has operational control over the plans and specifications, including the ability to make modifications to those plans and specifications; or (2) the person has day-to-day operational control of those activities at a Site which are necessary to ensure compliance with a SWPPP for the Site or other conditions of an Applicable Permit.

kk. Parties – Plaintiffs and Defendants.

ll. Plaintiffs – the United States acting on behalf of EPA, the City, and the State.

mm. Pre-Construction Inspection and Review – the inspection and review required by Paragraph 35 (Pre-Construction Inspection and Review).

nn. Pre-Construction Inspection and Review Form – the form attached at Appendix A and as required by Paragraph 35 (Pre-Construction Inspection and Review).

oo. Quarterly Compliance Inspection – an inspection of a Site, as required by Paragraph 38 (Site Storm Water Compliance Review and Oversight).

pp. Quarterly Compliance Review – a compliance review of a Site as required by Paragraph 28 (Site Storm Water Compliance Review and Oversight).

qq. Quarterly Compliance Review Form – the form attached at Appendix D (Quarterly Compliance Review Form) and as required by Paragraph 38 (Site Storm Water Compliance Review and Oversight).

rr. Record – any record, report, information, document, or photograph

required to be created or maintained pursuant to Storm Water Requirements.

ss.      Renewal Sites – Sites for which the Berra Companies or a Berra Related Company (i) had valid coverage under the General Permit coverage on February 1, 2007; (ii) had applied for renewal of that General Permit coverage solely because of the expected expiration of the General Permit; and (iii) had submitted the application on or before the Date of Entry.

tt.      Sediment Basin – an engineered temporary ponding basin formed by an embankment or excavation identified in the SWPPP for a Site as a BMP to capture sediment.

uu.      Site – means any land or water area at which Construction Activities occur during the time period that (i) any one of the Defendants is an Operator; (ii) any single Defendant or combination of Defendants owns a twenty-five percent or greater interest; or (iii) any Berra Related Company is an owner or Operator. The term Site includes, but is not limited to, land owned by CMB at Countryshire and land owned by JMB No. 2, LLC at the Enclaves at Cherry Hills.

vv.      Site Inspection – an inspection of a Site, as required by Paragraph 36 (Inspections).

ww.      Site Inspection Report – a form attached at Appendix C and as required by Paragraph 36 (Inspections).

xx.      Site Storm Water Compliance Manager – an employee of at least one of the Berra Companies designated pursuant to Paragraph 27 (Designation of Storm Water Compliance Managers) to oversee storm water compliance activities at a Site.

yy.      State – the State of Missouri.

zz.      Storm Water Compliance Managers – Site Storm Water Compliance

Managers and the Company Storm Water Compliance Manager. A Storm Water Compliance Manager is any one of these managers.

aaa. Storm Water Consultant – a SWPPP Preparer or any other person or company who assists Storm Water Compliance Managers in complying with Storm Water Requirements, including the installation or maintenance of BMPs. Consistent with such person’s responsibilities at a Site, each person who is a Storm Water Consultant shall: (i) possess the skills to assess conditions at a Site that could impact the quality of storm water and non-storm water discharges and compliance with Storm Water Requirements; and (ii) be knowledgeable in the principles and practices of sediment and erosion control and other BMPs used to minimize pollutants in storm water discharges from Construction Activities.

bbb. Storm Water Consultant Supervisor – the person identified under Paragraph 42 (Contractor and Storm Water Consultant Compliance).

ccc. Storm Water Records – all written records required to be created or maintained under the Storm Water Requirements.

ddd. Storm Water Requirements – the requirements (in their current form or as may be modified in the future) set forth in: (i) this Decree; (ii) Applicable Permits; and (iii) the storm water requirements of the Clean Water Act, the Missouri Clean Water Law, and applicable federal, state, and local regulations, including but not limited to Chapter 425: Grading and Excavation of the City’s Code of Ordinances, where Construction Activity occurs in the City.

eee. Storm Water Trained – an individual who: (i) is certified under the Storm Water Training Program pursuant to Paragraph 41 (Storm Water Training Program) or (ii) is certified by CPESC, Inc. under the Certified Professional in Erosion and Sediment Control

("CPESC") program and maintains a current CPESC certification. For purposes of this Decree, the Berra Companies' current consultant Charles D. Morris, P.E. and Ph.D., of Hydro-Engineers, LLC shall be deemed Storm Water Trained.

fff. Storm Water Training Program – this term includes all of the training required by Paragraph 41 (Storm Water Training Program).

ggg. SWPPP – a storm water pollution prevention plan, that meets Storm Water Requirements, for minimizing pollutants (as defined pursuant to 33 U.S.C. § 1362(6)) in storm water and non-storm water discharges.

hhh. SWPPP Preparer – a person or entity that assists the Berra Companies in preparing Site-specific SWPPPs and is (i) a registered Professional Engineer in Missouri and (ii) has been Storm Water Trained.

iii. Vertical Construction – all Construction Activities associated with erecting buildings and structures commencing with excavation for foundation construction and ending when a Notice of Termination has been filed.

## 2. Jurisdiction and Venue.

a. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 33 U.S.C. § 1319 and 28 U.S.C. §§ 1331, 1345, 1355, and 1367. The Complaint states a claim upon which relief may be granted under 33 U.S.C. § 1319. Venue is proper under 28 U.S.C. § 1391(b) and (c).

b. This Court will retain jurisdiction for the purposes of issuing such further orders and directions as may be necessary and appropriate for the implementation or modification of this Decree, and for enforcing compliance with the provisions of this Decree.

c. For purposes of this Decree, the Defendants consent to and will not contest the jurisdiction of this Court over this matter.

3. Parties Bound. The obligations of this Decree apply to and are binding upon Plaintiffs and upon the Defendants, as provided by the terms of this Decree, and any successors, assigns, or other entities or persons otherwise bound by law, including but not limited to Federal Rule of Civil Procedure 65(d).

4. Responsibility for Acts of Others. Each Defendant shall be responsible for complying with Storm Water Requirements at its Sites. Except as expressly provided in the Decree, a Defendant may delegate the performance of storm water compliance duties required under this Decree to Storm Water Consultants provided that such Storm Water Consultants have sufficient authority to carry out the delegated task. Any such delegation does not relieve that Defendant of responsibility for the proper performance of any delegated task or for compliance with Storm Water Requirements. In any action to enforce this Decree, no Defendant shall assert as a defense the failure by any officer, director, trustee, servant, assign, employee, agent, Contractor, Storm Water Consultant, or entity in active concert or participation with that Company to take any action necessary to comply with Storm Water Requirements at Sites.

5. Public Notice. The Parties acknowledge and agree that the final approval and entry of this Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides that notice of proposed consent decrees be given to the public and that the public shall have at least thirty days in which to make any comments. The United States may withhold or withdraw its consent to this Decree based on such comments.

6. Agreement Not to Challenge Decree. Defendants agree not to oppose entry of this

Decree by this Court or to challenge any provision or requirement in this Decree or incorporated into this Decree, including but not limited to challenging the validity or enforceability of any such provision or requirement.

7. No Warranty by Plaintiffs. Plaintiffs do not, by their consent to entry of this Decree, warrant or aver in any manner that the Defendants' compliance with this Decree will result in compliance with the provisions of applicable federal, state, or local laws, regulations, or permit conditions. Notwithstanding Plaintiffs' review and approval of any data, reports or plans formulated pursuant to this Decree, the Defendants shall remain solely responsible for compliance with Storm Water Requirements and any other applicable state, federal, or local law, permit or regulation.

8. Not a Permit Modification. This Decree is neither a permit nor a modification of existing permits under any federal, state, or local law, and in no way relieves any Defendant of its responsibilities to comply with all applicable federal, state, and local laws and regulations.

9. Headings. Headings in this Decree are provided for convenience only and shall not affect the substance of any provision.

10. Computation of Time. The computation of any period of time set forth in this Decree shall be governed by Rule 6 of the Federal Rules of Civil Procedure. If a stated time period in the Decree expires on a Saturday, Sunday, or State or Federal legal holiday, it shall be extended to include the next Business Day.

11. Final Judgment. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment between and among the Parties.

12. Purpose of Decree. It is the express purpose of this Decree to further the

objectives of the Clean Water Act as well as regulations and permits issued pursuant to that Act.

All obligations in this Decree shall have the objective of causing the Defendants to be and remain in full compliance with the Act, the regulations and permits issued pursuant to the Clean Water Act, as well as state and local laws, regulations, and permits authorized pursuant to the Clean Water Act.

13. Access.

a. Until termination of this Decree, Plaintiffs, their representatives, contractors, consultants and attorneys and their contractors and consultants shall each have the authority to enter, at reasonable times and upon presentation of credentials, any Site within the geographic boundaries of the respective Plaintiff or any location within the geographic boundaries of the respective Plaintiff at which records relating to this Decree are kept for the purposes of:

- i. monitoring any Defendant's compliance with this Decree;
- ii. verifying any data or information submitted by any Defendant pursuant to this Decree;
- iii. obtaining samples from any Site and, upon request, splits or duplicates of any samples taken by any Defendant, its contractors or consultants; and
- iv. reviewing and copying any records required to be kept by any Defendant pursuant to this Decree.

b. Nothing in this Paragraph or any other provision of this Decree shall be construed to limit any statutory right of entry or access or other information gathering authority pursuant to any federal, state, or local law.

14. Preservation of Records. In addition to complying with any other applicable local, state, or federal records preservation requirements, until one calendar year after termination of this Decree, each Defendant shall preserve at least one legible copy of all Storm Water Records in its possession, custody, or control. Within thirty days of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this Decree, the appropriate Defendant shall enter into an agreement with any such agent, consultant, or contractor requiring such person to provide such Defendant with a copy of all Storm Water Records.

15. Authority to Sign Decree. The undersigned representatives of the Defendants certify that they are authorized to enter into this Decree and to execute and legally bind the Defendants to the terms and conditions of this Decree and meet the requirements for authorized signatory found in 40 C.F.R. § 122.22(a) or (b). For purposes of this Paragraph, where the signatory is a limited liability company, a member or officer of a member of the limited liability company shall qualify as a corporate officer thereof.

16. Service and Answer.

a. Each Defendant shall identify on the attached signature page the name and address of an agent who is authorized to accept service of process by mail on that Defendant's behalf with respect to all matters arising under or relating to this Decree. Each Defendant agrees to accept service in that manner and to waive the formal service requirements of Federal Rule of Civil Procedure 4 and any applicable local rules of this Court, including, but not limited to, service of summons.

b. The Parties agree that the Defendants need not file an answer to the Complaint and Complaint in Intervention in this action unless or until this Court expressly

declines to enter this Consent Decree.

17. Notices.

a. When written notification or communication is required by the terms of this Decree, such notification or communication shall be addressed to the following individuals at the addresses specified below (or to such other addresses as may be designated by written notice to the parties):

As to the United States:

Chief, Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Reference Case No. 90-5-1-1-08444

Chief, Water Enforcement Branch  
Water, Wetlands & Pesticides Division  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, Kansas, 66101  
(913) 551-7544  
[huffman.diane@epa.gov](mailto:huffman.diane@epa.gov)

As to the State of Missouri:

Chief of Compliance and Enforcement  
Water Pollution Control Program  
Water Protection Branch  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102-0176  
[Kevin.Mohammadi@dnr.mo.gov](mailto:Kevin.Mohammadi@dnr.mo.gov)

Chief Counsel  
Missouri Attorney General's Office  
Agriculture & Environment Division  
P.O. Box 899

Jefferson City, MO 65102  
As to the City of Wildwood:

City of Wildwood  
16962 Manchester Road  
Wildwood, Missouri 63040  
Attn: Department of Public Works and City Attorney

As to the Berra Companies:

John H. Berra, Jr.  
JHB Properties, Inc.  
5091 New Baumgartner Road  
St. Louis, MO 63129  
Gregory Smith  
Husch & Eppenger, LLC  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105

As to JMB No. 2, LLC:

John H. Berra, Jr.  
JHB Properties, Inc.  
5091 New Baumgartner Road  
St. Louis, MO 63129

Gregory Smith  
Husch & Eppenger, LLC  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105

As to CMB Rhodes, LLC:

John H. Berra, Jr.  
JHB Properties, Inc.  
5091 New Baumgartner Road  
St. Louis, MO 63129

Gregory Smith  
Husch & Eppenger, LLC  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105.

b. Notifications to or communications with any Party shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested or submitted to an overnight courier service with delivery verification.

18. Certification of Reports and Submissions. Any report or other document submitted by a Defendant pursuant to this Decree which makes any representation concerning compliance or noncompliance shall contain a certification that conforms to the requirements of 40 C.F.R. § 122.22.

19. Entire Agreement. This Decree is the final, complete, and exclusive agreement between the Parties. The Parties acknowledge that there are no inducements, promises, representations, agreements, or understandings relating to the settlement other than those expressly contained in this Decree.

20. Modification. The terms of this Decree may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

21. Costs of Suit. Except as expressly provided in this Decree, each party to this action shall bear its own costs and attorneys' fees incurred prior to entry of the Decree in this action, including those costs and fees incurred in *JMB No. 2, L.L.C. v. City of Wildwood, Missouri*, No. 4:04-CV-62-CD (E.D. Mo.); *JMB No. 2, L.L.C. v. City of Wildwood, Missouri*, No. 04CC-000199 (St. Louis County Cir. Ct.); *JMB No. 2, L.L.C. v. Thibeault*, No. 04CC-000563 (St. Louis County Cir. Ct.); *JBA Eureka, LLC v. Department of Natural Resources and Doyle Childers, Director*, No. 07-0244 CWC (Administrative Hearing Commission); and *JBA Eureka, LLC v. Department of Natural Resources and Doyle Childers, Director*, No. 07-0243

CWC (Administrative Hearing Commission).

22. Request to Terminate Decree. No sooner than five years after the Date of Entry, the Berra Companies may request Plaintiffs' consent to terminate this Decree. In seeking such consent, the Berra Companies shall demonstrate that:

- a. Each Defendant has paid all monies, civil penalties, interest, and stipulated penalties due under this Decree;
- b. Each Defendant is in compliance with this Decree;
- c. There are no unresolved matters subject to dispute resolution pursuant to Section VII (Dispute Resolution); and
- d. No enforcement action under this Decree is pending.

23. Response to Request for Termination. If the United States, after consultation with the State and City (with respect to Sites in the City only, if any), agrees that the requirements of Paragraph 22 (Request to Terminate Decree) are satisfied, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree. If the United States, after consultation with the State and City (with respect to Sites in the City only, if any), does not agree that the requirements of Paragraph 22 (Request to Terminate Decree) are satisfied, the Berra Companies may invoke the provisions of Section VII (Dispute Resolution), and the Decree shall remain in effect pending resolution of the dispute by the Parties, or, ultimately, the Court. However, the Berra Companies shall not seek dispute resolution of any dispute regarding termination, under Paragraph 22 (Request to Terminate Decree), until ninety days after service of its request for termination. In any dispute concerning termination of this Decree, the Berra Companies shall bear the burden of proving that all conditions required for termination of this

Decree are satisfied.

24. Appendices. The Appendices identified in the Table of Contents are attached and incorporated by reference.

## II. COMPLIANCE PROGRAM

### 25. Application of Compliance Program.

a. Where a provision of this Section II (Compliance Program) assigns to any Berra Company a duty at any Site, that Berra Company shall either carry out that duty directly or shall cause the Berra Related Company at that Site to carry it out. Any actions taken by a Berra Related Company in conformance with the terms of this Decree shall be deemed to be the actions of a Berra Company.

b. JMB No. 2, LLC shall not conduct land disturbance or other Construction Activity at any property other than the Enclaves at Cherry Hills in Wildwood, Missouri and shall not commence additional Construction Activity at The Enclaves at Cherry Hills except as required pursuant to Paragraph 45 (After-the-Fact Permit).

c. CMB shall not conduct land disturbance activity or other Construction Activity at any property other than the Countryshire development in O'Fallon, Missouri, except as required by the City of O'Fallon associated with the Countryshire development or the provisions of Paragraph 46 (Mitigation and Remediation at Countryshire).

d. Where a provision of this Section II (Compliance Program) assigns an obligation to CMB, that obligation extends only to Countryshire and does not require, or allow CMB to undertake actions pursuant to this Consent Decree at any other Site.

### 26. Compliance.

- a. Each Defendant shall comply with all applicable Storm Water Requirements and Local Law.
- b. No Defendant shall engage in any activity at any location that results in a discharge of pollutants or water contaminants to Jurisdictional Waters except in conformance with the Clean Water Act, the Missouri Clean Water Law, and applicable Local Law.
- c. No Defendant shall undertake Construction Activity at a Site that is in violation of the terms of the Applicable Permit, Local Law, or the applicable SWPPP.
- d. No Defendant shall cause or contribute to a discharge of pollutants or water contaminants to Jurisdictional Waters that (i) reduces the quality of such waters below the state water quality standards, 10 C.S.R. § 20-7.031, (ii) that causes or creates a nuisance; (iii) contains contaminants or pollutants in sufficient amounts to cause the formation of unsightly or harmful bottom deposits, to cause unsightly color or turbidity, or prevents full maintenance of beneficial uses, or (iii) transfers debris onto another's property, unless such activity is authorized by all necessary permits, including but not limited to a permit pursuant to 33 U.S.C. § 1344 and a Water Quality Certification issued pursuant to 10 C.S.R. § 20-6.060, where required.
- e. Whenever a Defendant engages in Construction Activity, such Defendant shall maintain good housekeeping practices so as to keep solid waste from entering Jurisdictional Waters.

27. Designation of Storm Water Compliance Managers.

- a. The Berra Companies shall designate at least one Site Storm Water Compliance Manager for each Site prior to the commencement of Construction Activities at the Site or within thirty Business Days of the Date of Entry, whichever is later. The Site Storm

Water Compliance Manager may be the same person at different Sites and may have other duties at the Site, provided that each Site Storm Water Compliance Manager is afforded sufficient time and authority to meet each obligation of this Paragraph for each Site for which that individual is responsible. If more than one Site Storm Water Compliance Manager is appointed for a Site, the Berra Companies shall specify each Site Storm Water Compliance Manager's responsibilities in the SWPPP, as required by Paragraph 30 (Storm Water Plans and Records). The Site Storm Water Compliance Manager(s) shall:

- i. be an employee of at least one of the Berra Companies;
- ii. be Storm Water Trained (a) within thirty days after the Training Plan is approved pursuant to Paragraph 41 (Storm Water Training Program); (b) before Construction Activities commence at the Site, if such Construction Activities commence more than thirty days after the Training Plan is approved; or (c) before the person is appointed a Site Storm Water Compliance Manager at the Site.
- iii. have the responsibility and authority to manage all activities necessary to meet Storm Water Requirements at the Site, including those activities performed by Contractors and Storm Water Consultants. All Site Storm Water Compliance Managers at each Site are required to take or direct action to meet Storm Water Requirements, without regard to where or when he or she observes or learns of a particular Action Item;
- iv. have the responsibility and authority to order employees, Contractors and Storm Water Consultants to stop work at the Site as a result of failure to comply with Storm Water Requirements and to order or recommend such other sanctions or actions as necessary to meet Storm Water Requirements;

v. be familiar with and have the authority to certify and cause the Site's SWPPP to be amended;

vi. be the point of contact at the Site for regulatory officials, the Berra Companies' and CMB's employees, Contractors, and Storm Water Consultants regarding Storm Water Requirements;

vii. report to the Company Storm Water Compliance Manager regarding compliance with Storm Water Requirements; and

viii. be on Site (a) for at least four hours each Business Day that rough grading, sewer installation, or water main installation are occurring; (b) for at least one hour on each of three Business Days a week when any other Construction Activities are occurring at a Site; and (c) for such additional time as is necessary to ensure that he can (1) review Site conditions in light of predicted storm events and direct additional maintenance or BMPs as necessary, (2) visually observe all areas actively subject to Construction Activities, (3) meet the requirements of this Paragraph; and (4) can cause Action Items to be promptly identified and Corrective Actions timely taken.

b. The Berra Companies shall designate one Company Storm Water Compliance Manager within three Business Days of the Date of Entry. The Company Storm Water Compliance Manager shall:

- i. be an employee of at least one of the Berra Companies;
- ii. be Storm Water Trained no more than thirty days after the Training Plan is approved as provided in Paragraph 41 (Storm Water Training Program);
- iii. have the authority to develop and implement storm

water management practices and policies for the Berra Companies;

iv. oversee the development and implementation of the Storm Water Training Program established pursuant to Paragraph 41 (Storm Water Training Program);

v. oversee the development and maintenance of the list of Sites required by Paragraph 28 (List of Sites);

vi. submit the Compliance Summary Report to Plaintiffs pursuant to Paragraph 39 (Compliance Summary Report); and

vii. serve as the Berra Companies' point of contact for Plaintiffs regarding the Berra Companies' and CMB's compliance with Storm Water Requirements.

28. List of Sites.

a. Within thirty days of the Date of Entry, the Berra Companies shall provide, electronically and in hard copy, a List of Sites to Plaintiffs (in accordance with Paragraph 17 (Notices)).

i. The initial List shall include all Sites where Construction Activity has commenced before the Date of Entry and where coverage under the Applicable Permit has not been terminated.

ii. The List shall include the following information for each Site:  
(A) the Site name, address, latitude and longitude; (B) each Berra Company or Berra Related Company that is an owner or Operator of the Site, as well as each other owner or Operator of the Site; (C) the date the Pre-Construction Inspection and Review Form was signed; (D) the estimated number of acres that will be disturbed at the Site; (E) the effective date of Applicable Permit coverage, permit number, and the name of the permit holder(s); (F) the name and contact

number for the relevant Site Storm Water Compliance Manager(s) and Company Storm Water Compliance Manager; (G) for those Sites where an entity other than a Berra Company commenced Construction Activities, the date a Berra Company or Berra Related Company became an owner or Operator of part or the entirety of a Site, whichever comes first; and (H) when applicable, the date permit coverage was terminated under the Applicable Permit.

b. The Berra Companies shall update the List by adding new Sites started during the prior calendar quarter by the thirtieth day of the next calendar quarter. Any Site for which permit coverage was terminated shall be included on the first quarterly update following such permit coverage termination, but need not be included in the List in subsequent updates.

29. Permits.

a. Each Berra Company that engages in Construction Activity at a Site shall file a Notice of Intent for such Site. No Berra Company shall commence Construction Activity or continue Construction Activity at a Site until such Berra Company has obtained coverage under an Applicable Permit or, if a Berra Related Company is the owner or Operator of the Site, until such Berra Related Company has obtained a Permit.

b. The Berra Companies and CMB shall prohibit any Contractor or Storm Water Consultant from commencing Construction Activity or continuing Construction Activity at a Site until the Berra Companies (or the owner and operator of the Site if the Berra Company is neither owner nor operator) has obtained coverage under an Applicable Permit.

c. The Berra Companies and CMB shall obtain, transfer, and terminate coverage as required by the Applicable Permit. The Berra Companies and CMB shall not transfer or terminate permit coverage for a Site unless such Site is in compliance with all Storm

Water Requirements applicable to the then current stage of development. Provided that the Site is in compliance with all Storm Water Requirements, the Applicable Permit for that Site shall be subject to the same termination and change of ownership standards and practices as all other permittees in the state.

d. No Defendant shall engage in Construction Activity at a location for which it is not the permittee until the Defendant employee responsible for supervising the Defendant's participation in such Construction Activity has checked the public record and determined that coverage under an Applicable Permit has been obtained for such Construction Activity.

30. Storm Water Plans and Records.

a. Prior to the commencement of Construction Activities at each Site, the Berra Companies shall prepare a Site-specific SWPPP. The SWPPP shall include a narrative report which describes in narrative form BMPs to be installed and a justification for the BMPs selected, the sequence of the installation of BMPs, and the specifications for BMP installation and maintenance. The SWPPP shall address the question of whether phasing of the grading activities at the Site is an appropriate BMP and, if phasing of grading activity is selected, contain a narrative description of the phases and how the phases were designed. For Renewal Sites, a new Site-specific SWPPP in conformance with the provisions of this Paragraph 30 (Storm Water Plans and Records) is not required.

b. The Berra Company which prepared the SWPPP shall submit the SWPPP for a Site to the MDNR for review and approval. MDNR, after consultation with the City (if the Site is within the geographic boundaries of the City), shall approve the proposed SWPPP provided that it complies with the Permit and the requirements of this Paragraph 30 (Storm

Water Plans and Records). If MDNR disapproves the SWPPP, the Berra Companies shall correct the Plan as directed by MDNR or invoke the procedures set forth in Section VII (Dispute Resolution). The Berra Companies shall not engage in Construction Activity at a Site until MDNR has approved the SWPPP as provided in this subparagraph.

c. All SWPPPs and SWPPP amendments shall comply with the terms and conditions of the Applicable Permit, this Decree, and Local Law. The SWPPP Preparer shall use the SWPPP Criteria, attached hereto as Appendix A, as a guide. Each SWPPP shall:

i. utilize BMPs appropriate for the specific Site conditions at all stages of construction which a Berra Company or a Berra Related Company is expected to perform at the Site;

ii. contain at least three steps: 1) initial site preparation; 2) sequential clearing and grading; and 3) final site preparation. Step one shall detail the BMPs that are necessary to be constructed in advance of grading and clearing operations. Step two shall specify BMPs to be used and installed during clearing and grading activities. Step three shall specify how and when the site will be stabilized after clearing and grading has concluded, in advance of building construction;

iii. describe each step which will proceed sequentially and, provide a schedule for installation of BMPs that ensures that each BMP designed to control particular discharges are installed before the Construction Activities that would cause those discharges to occur;

iv. include specifications for each BMP described in the SWPPP which includes the following; 1) a description of the BMP; 2) where the BMP is to be installed;

3) when the BMP is to be installed; 4) BMP installation procedures; 5) BMP maintenance procedures; and 6) conditions for BMP removal;

v. select BMPs designed to be effective in eliminating or significantly minimizing pollutants in storm water discharges from the Site;

vi. utilize a combination of erosion and sediment control BMPs that:  
(a) minimizes the amount of disturbed soil; (b) prevents runoff from off-Site areas flowing across disturbed areas; (c) slows down the runoff flowing across a Site; (d) removes sediment from on-Site runoff before it leaves the Site; and (d) meets or exceeds the requirements of the Applicable Permit and Local Law;

vii. provide narrative descriptions of the inspection and repair procedures to ensure BMPs are kept in effective operating condition and require adherence to Paragraphs 36 (Inspections) and 37 (Maintenance);

viii. provide that disturbed land shall be stabilized either with seventy percent vegetative cover over one hundred percent of the area or mulch as soon as practicable after the commencement of Construction Activities and set forth the number of days between the commencement of construction and final stabilization, which shall not be greater than 365 days unless specifically approved by MDNR after consultation with the City (where the Site is within the geographic boundaries of the City). Once approved by MDNR the schedule for implementation of final stabilization cannot be modified without specific approval by MDNR after consultation with the City (where the Site is within the geographic boundaries of the City);

ix. require adherence to the requirements of Paragraphs 31 (Criteria for Grading and Clearing), 32 (Criteria for Stabilization), 33 (Criteria for Sediment Basins and

Detention Ponds), and 34 (Construction Entrances and Exits); and

x. include methods for preventing non-storm water discharges.

d. If there is more than one Site Storm Water Compliance Manager for the Site, the SWPPP shall specify how transitions between Site Storm Water Compliance Managers shall be handled and how responsibilities shall be coordinated.

e. Except as expressly provided in subparagraph 30.(c)(viii), SWPPPs shall be revised or amended in accordance with the Applicable Permit and Local Law.

f. All SWPPPs and SWPPP amendments that alter the schedule for construction, the placement or design of structural BMPs, or the narrative analysis shall be certified pursuant to 40 C.F.R. § 122.22. For purposes of this subparagraph, the Site Storm Water Compliance Manager may be delegated authority to certify SWPPP amendments.

g. All Site Storm Water Compliance Managers assigned to a Site and the Company Storm Water Compliance Manager shall review and become familiar with the SWPPP for that Site. This task can not be delegated.

h. The individual who prepares the SWPPP shall be a SWPPP Preparer.

i. Before the commencement of Construction Activity at the Site, the individual who prepares the SWPPP shall certify on the face of the SWPPP that he or she has been to the Site, reviewed the SWPPP in light of site conditions, and determined that the SWPPP calls for BMPs appropriate for Site conditions.

j. Before commencement of Construction Activity at the Site, or before each such Storm Water Consultant Supervisor begins work at a Site, the Berra Companies shall require each Storm Water Consultant Supervisor to review the terms of this Decree and the

SWPPP. The Site Storm Water Compliance Manager shall sign a statement that he has shown the SWPPP and Decree or an EPA approved summary of the Decree to the Storm Water Consultant Supervisor and shall keep a copy of such statement with the SWPPP.

k. The SWPPP and any Records required to be maintained with the SWPPP by the Applicable Permit or by Paragraphs 36 (Inspections), 37 (Maintenance) and 38 (Site Storm Water Compliance Review and Oversight) shall be maintained at the Site or, if there is no construction office, the location of the SWPPP shall be posted, along with the name and contact information of the Site Storm Water Compliance Manager(s), in a conspicuous location at the Site, such as the Site entrance or exit. Upon request, the appropriate Berra Company shall make the SWPPP available for review pursuant to Paragraph 13 (Access) as well as to inspectors with authority under the Applicable Permits, Contractors, Storm Water Consultants, and employees.

l. Records required under Paragraphs 35 (Pre-Construction Inspection and Review), and 41 (Storm Water Training Program) shall be maintained with the SWPPP.

31. Criteria for Grading and Clearing.

a. At each Site, the Berra Companies and CMB shall schedule and limit grading activities to minimize bare soils and the time of exposure.

b. At each Site, the Berra Companies and CMB shall cause the SWPPP to provide the following:

i. The Berra Companies and CMB shall not clear, grub, or grade within 50 feet of a defined water drainage course except in conformance with law;

ii. Where changes to defined drainage courses are permitted by the Applicable Permit, the Clean Water Act, the Clean Water Law and Local Law, the Berra

Companies and CMB shall not clear, grub, or grade within 50 feet of the defined drainage course until all materials and equipment necessary to protect and complete the drainage change are on site.

iii. Where changes to defined drainage courses are permitted by the Applicable Permit, the Clean Water Act, the Clean Water Law and Local Law, the Berra Companies and CMB shall: (a) complete changes to defined drainage courses in conformance with the law and as quickly as possible once the work has been initiated; (b) revegetate or otherwise protect from erosion the area impacted by the land disturbance of the drainage course change as soon as possible; and (c) recontour (as needed) and revegetate areas within 50 feet of defined drainage within five working days after grading has ceased.

c. At each Site, the Berra Companies and CMB shall schedule grading activities so that the time period for disturbed areas to be without vegetative cover is minimized to the extent practicable.

d. The Berra Companies and CMB shall phase grading in conformance with law.

32. Criteria for Stabilization.

a. At each Site, if any graded and cleared area (i) is larger than one acre and not subject to any Construction Activities for fourteen days or longer or (ii) contains a slope greater than 3:1 or a slope greater than 3% and longer than 150 feet and is not subject to Construction Activities for seven days or longer, the Berra Companies and CMB shall install interim stabilization within the meaning of paragraph 8.f. of the Missouri General Permit series 101.

b. For purposes of this Paragraph, Construction Activities means only ground disturbing activity directly associated with either (i) achieving final approved grade elevations in that specific area of the Site; (ii) installing streets, sidewalks, or utilities; (iii) installing structures called for in the development plan; (iv) activities necessary to achieve the stabilization required by this Paragraph; or (v) Vertical Construction.

c. The Berra Companies and CMB shall use seeding as a stabilization measure only when appropriate to the season and Site conditions.

33. Criteria for Sediment Basins and Detention Ponds.

a. At each Site, the Berra Companies and CMB shall provide a Sediment Basin for each drainage area with 10 or more acres disturbed at one time.

b. At each Site, the Berra Companies and CMB shall ensure that each Sediment Basin is sized to contain 0.5 inch of sediment from the drainage area and to be able to contain a 2-year, 24-hour storm and provides a minimum of 3600 cubic feet of storage for each disturbed acre draining thereto. Where use of a Sediment Basin of this size is impractical, the Berra Companies and CMB shall evaluate and specify in the SWPPP other similarly effective BMPs to control erosion and sediment delivery.

c. At each Site, the Berra Companies and CMB shall locate each Sediment Basin as close to the sediment source as possible. Sediment Basins may not be located offsite.

d. At each Site, the Berra Companies and CMB shall clean the sediment out of each Sediment Basin and otherwise maintain the basins as needed until the drainage area is finally stabilized or the permit is terminated.

e. At each Site, the Berra Companies and CMB shall provide each Sediment

Basin with a stabilized spillway to minimize the potential for erosion of the spillway or basin embankment. The Berra Companies and CMB shall not use a Jurisdictional Water as the channel to divert flow to a sedimentation basin, unless such activity is authorized by all necessary permits, including but not limited to a permit pursuant to 33 U.S.C. § 1344 and a Water Quality Certification issued pursuant to 10 C.S.R. § 20-6.060.

f. At each Site, the Berra Companies and CMB shall design each Sediment Basin to discharge at a rate that will not cause scouring of the banks or bottom of the receiving water.

g. At each Site, to the extent the Berra Companies or CMB elect to use a Detention Pond in addition to or separate from a Sediment Basin, such Defendant shall locate each Detention Pond as close to the storm water collection system as possible and on the Site unless such Defendant obtains access rights and maintains the Detention Pond until permit coverage is terminated.

h. The Berra Companies and CMB shall not use a Jurisdictional Water as a Sediment Basin or Detention Pond unless such activity is authorized by all necessary permits, including but not limited to a permit pursuant to 33 U.S.C. § 1344 and a Water Quality Certification issued pursuant to 10 C.S.R. § 20-6.060.

34. Construction Entrances and Exits.

a. At each Site, the Berra Companies and CMB shall design construction entrances and exits that provide a buffer area where construction vehicles can drop their mud to avoid transporting it off site and shall require vehicles to enter and exit the Site through these buffer areas.

b. At each Site, the Berra Companies and CMB shall inspect the entrance and exit areas weekly, within 24 hours after storm events, and within 24 hours after periods of heavy use.

c. At each Site, the Berra Companies and CMB shall re-shape the buffer area as necessary to control drainage and runoff and shall top dress the area with clean 2-inch stone as necessary to minimize the sediment tracked or washed onto streets dedicated or open to the public or onto any street or channel connected to a Jurisdictional Water.

d. At each Site, on each Business Day during which Construction Activity occurs, the Berra Companies and CMB shall remove debris, mud, or sediment tracked or washed onto streets dedicated or open to the public or onto any street or channel connected to a Jurisdictional Water.

e. At each Site, prior to seeding or undertaking other efforts to establish vegetation for stabilization, the Berra Companies and CMB shall remove all temporary road materials from areas where permanent vegetation will be established.

35. Pre-Construction Inspection and Review

a. Prior to the commencement of Construction Activity at a Site, a Storm Water Compliance Manager shall perform a Pre-Construction Inspection and Review. Where any entity other than a Berra Company or a Berra Related Company commenced Construction Activities at a Site, a Storm Water Compliance Manager shall perform a Pre-Construction Inspection and Review no later than five days after such Berra Company or Berra Related Company assumes ownership or operational control of part or the entirety of a Site, whichever comes first. Pre-Construction Inspection and Review is not required at Renewal Sites.

b. For purposes of this Paragraph, the commencement of Construction Activity does not include geotechnical investigations, surveying, environmental testing, plant (vegetation) salvage, or the initial installation of BMPs that are not sediment basins, provided none of these activities involve significant soil disturbance or require a federal, state, or local permit.

c. The Pre-Construction Inspection and Review shall include an inspection of the entire Site and completion of the Pre-Construction Inspection and Review Form attached at Appendix B. Prior to the commencement of a Berra Company's or Berra Related Company's Construction Activity, a Corrective Action must be completed for each Action Item identified during the Pre-Construction Inspection and Review.

d. A Storm Water Compliance Manager shall review and sign the Pre-Construction Inspection and Review Form. This task can not be delegated. The Pre-Construction Inspection and Review Form shall be kept with the SWPPP.

36. Inspections.

a. For each Site, at a minimum, the Site Storm Water Compliance Manager shall either inspect the Site or cause the Site to be inspected by an employee of a Berra Company who is Storm Water Trained or a Storm Water Consultant at the frequency required by the Applicable Permit. The Site Inspections shall start from the date the Pre-Construction Inspection and Review is signed, or the date required by the Applicable Permit, whichever is earlier. The individual performing the inspection shall conduct and record the Site Inspections on the Site Inspection Report attached as Appendix C.

b. The Site Storm Water Compliance Manager shall certify the Site

Inspection Report in accordance with the terms of Paragraph 18 (Certification of Reports and Submissions). This task can not be delegated.

c. A copy of the final Site Inspection Report generated prior to the submittal of a Notice of Termination shall be clearly labeled as such.

d. The Site Inspection Reports shall be kept with the SWPPP.

37. Maintenance.

a. The Berra Companies and CMB shall maintain each Site or cause each Site to be maintained in accordance with Storm Water Requirements.

b. For every Action Item observed during the Site Inspection or the Quarterly Compliance Inspection, as required by Paragraph 38 (Site Storm Water Compliance Review and Oversight), the Site Storm Water Compliance Manager shall record on the Site Inspection Report: (i) the number of the Action Item, (ii) the inspection date, (iii) the Corrective Action taken, and (iv) the date the Corrective Action was completed. This task cannot be delegated.

c. The Berra Companies and CMB shall cause each Corrective Action to be completed within the lesser of five Business Days of the inspection or the time period specified in the Applicable Permit.

38. Site Storm Water Compliance Review and Oversight.

a. At least once each calendar quarter, the Company Storm Water Compliance Manager shall conduct an unannounced Quarterly Compliance Inspection of each Site. The results shall be recorded on a Site Inspection Form attached at Appendix C. The Quarterly Compliance Inspection shall not be conducted by the same person who conducted the

Site Inspection under Paragraph 36 (Inspections) at the Site during that quarter.

b. No later than seven days after the Quarterly Compliance Inspection, the Company Storm Water Compliance Manager shall complete a Quarterly Compliance Review in accordance with the procedures and Form attached at Appendix D. The Company Storm Water Compliance Manager shall review the Quarterly Compliance Review Form with the Site Storm Water Compliance Manager(s), all of whom shall initial the Quarterly Compliance Review Form. No task in this subparagraph may be delegated.

c. The Berra Companies and CMB shall cause a Corrective Action for each Action Item identified in the Quarterly Compliance Inspection or Quarterly Compliance Review to be completed in the same manner as required under Paragraph 37 (Maintenance).

d. Quarterly Compliance Inspections and Quarterly Compliance Reviews shall be kept with the SWPPP.

39. Compliance Summary Report. By March 1st and October 1st of each calendar year, the Company Storm Water Compliance Manager shall submit to Plaintiffs, a Compliance Summary Report in accordance with the procedures and form attached as Appendix E. The Company Storm Water Compliance Manager shall certify the report, a task which can not be delegated. Copies shall be sent to the corporate officers of each Berra Company, the members of CMB (for Countryside only), the Company Storm Water Compliance manager and each Site Storm Water Compliance Managers designated as the primary site storm water compliance manager in the SWPPP.

40. Public Notification Signs. The Berra Companies and CMB shall post a copy of the public notification sign required by the Missouri General Permit at each Site. The public

notification sign must be visible from the public road that provides access to the Site's main entrance and must remain posted at the Site until the permit has been terminated.

41. Storm Water Training Program.

a. Within thirty days of the Date of Entry, the Berra Companies shall submit a Training Plan to Plaintiffs for review and approval. The Training Plan shall provide for four separate training programs: (1) Site-Specific Training; (2) Management Training; (3) SWPPP Preparer Training; and (4) Annual Refresher Training.

b. The Site-Specific Training program shall have three elements: (1) Tool Box Talks; (2) Site Orientation; and (3) Tip Sheets.

i. The Berra Companies shall provide regular Tool Box Talks for each employee of a Berra Company, CMB, or Berra Related Company who is involved with Construction Activity at a Site and who is not covered by subparagraphs c or d. The Training Plan shall provide an outline of Tool Box Talks to be given at least one time per month at the time typically used by the Berra Companies for Tool Box Talks with its employees. The Training Plan shall require the Tool Box Talks to address the following areas: (1) an introduction to the importance of erosion and sediment control; (2) a review of Storm Water Requirements and applicable Local Law, including the fines and penalties for noncompliance; (3) a description of BMPs and a discussion of the importance of maintaining these BMPs; (4) the procedure for reporting Action Items any person identifies during the Construction Activity; and (5) any recurring Action Items that have occurred at the Site since the last Tool Box Talk.

ii. The Berra Companies shall provide a site-specific storm water orientation to all supervisors, Contractor Supervisors and Storm Water Consultant Supervisors

involved in clearing and grading activities at a Site before Construction Activities commence after the Date of Entry. The Site-Specific Storm Water Orientation shall include a review of the following topics: (i) a description of storm water runoff and potential effects of runoff; (ii) an overview of Storm Water Requirements; (iii) an overview of the SWPPP and the proper maintenance of the BMPs installed and to be installed on the Site during Construction Activities; and (iv) the obligation of each individual not to interfere with the effectiveness of the BMPs at the Site and to identify Action Items and (v) bring them to the attention of the Site Storm Water Compliance Manager. Each Berra Company shall maintain records documenting that each of its supervisor, Contractor Supervisor, and Storm Water Consultant Supervisor involved in clearing and grading activities at a Site has received Site-Specific Storm Water Orientation; these records shall be kept with the SWPPP.

iii. The Training Plan shall also include a "Storm Water Tip Sheet" that provides an accurate and understandable description of the Storm Water Requirements. The Training Plan shall require distribution of the Storm Water Tip Sheet at the Site-Specific Orientation, the Tool Box Talks, and to all employees of a Defendant or a Berra Related Company who begin work at a Site after the Site-Specific Orientation has been delivered. In addition, the Training Plan shall require the Berra Companies to provide the "Storm Water Tip Sheet" to each Contractor Supervisor and direct them to circulate the information to the Contractor's employees working at a Site before that Contractor begins working at the Site.

c. The Berra Companies shall require all Storm Water Compliance Managers, grading superintendents, sewer and water installation foremen, and any other employees of a Berra Company or CMB responsible for supervising the installation or

maintenance of BMPs to attend and successfully complete at least four hours of classroom Management Training. The Training Plan shall require the Management Training program to include the following elements:

- i. an introduction to the importance of erosion and sediment control;
- ii. a review of Storm Water Requirements, including the fines and penalties for non-compliance;
- iii. a review of proper preparation of a Notice of Intent and Notice of Termination and other filing requirements;
- iv. a review of the contents of the SWPPP;
- v. updating and maintaining an accurate SWPPP;
- vi. a review of the principles of erosion and sediment control;
- vii. a review of the types of BMPs available and discussion of the principles and methods of BMP selection consistent with the Missouri General Permit and the guidance documents cited in that permit;
- viii. a discussion of non-storm water pollutants and their control;
- ix. a review of proper installation and maintenance of BMPs, including examples of acceptable and unacceptable BMP installation and maintenance;
- x. a review of the inspection requirements, the use of the inspection form required by this Consent Decree, and a discussion of the requirements for correction and certification of the information contained within the inspection forms;
- xi. a discussion of records management and organization;
- xii. a discussion of Site posting requirements;

xiii. a discussion of permit transfer and termination procedures, including stabilization requirements;

xiv. a review of the requirements of this Decree; and

xv. a written examination to determine proficiency in the principles and practices of, and statutes governing, erosion and sediment control and the requirements of this Decree and, upon successful completion of the examination, issuance of a training certificate that is valid for twelve months.

d. The Berra Companies shall require all its SWPPP Preparers to attend and successfully complete at least four hours of classroom SWPPP Preparer Training. The Training Plan shall require the SWPPP Preparer Training program to include the following elements:

- i. an introduction to the importance of erosion and sediment control;
- ii. a review of Storm Water Requirements, including the fines and penalties for non-compliance;
- iii. a review of proper preparation of a Notice of Intent and Notice of Termination and other filing requirements;
- iv. a review of the contents of the SWPPP and the SWPPP Criteria in Appendix A;
- v. updating and maintaining an accurate SWPPP;
- vi. a review of the principles of erosion and sediment control;
- vii. a detailed review of the types of BMPs available and discussion of the principles and methods of BMP selection consistent with the Missouri General Permit and the guidance documents cited in that permit;

- viii. a discussion of non-storm water pollutants and their control;
  - ix. a review of proper installation and maintenance of BMPs, including examples of acceptable and unacceptable BMP installation and maintenance;
  - x. a review of the inspection requirements and a discussion of the requirements for correction and certification of the information contained within the inspection forms;
  - xii. a discussion of permit transfer and termination procedures, including stabilization requirements;
  - xiii. a review of the requirements of this Decree; and
  - xiv. a written examination to determine proficiency in the principles and practices of, and statutes governing, erosion and sediment control and the requirements of this Decree and, upon successful completion of the examination, issuance of a training certificate that is valid for twelve months.
- e. The Berra Companies shall provide Annual Refresher Training for each individual subject to the training requirements of the Management Training Program or the SWPPP Preparer Training. The Training Plan shall require the Annual Refresher Training to consist of two to three hours of classroom training addressing the topics required in the applicable training program and updating the participants on new regulations, trends in the Berra Companies' storm water control compliance at their Sites, and new corporate policies to strengthen compliance efforts. The Training Plan shall also require the Annual Refresher Training to conclude with a written test to determine proficiency in the principles and practices of, and statutes governing, erosion and sediment control and the requirements of this Decree.

Upon successful completion of the Annual Refresher Training, the Training Plan shall call for the issuance of a renewal certificate valid for twelve months. Storm Water Compliance Managers, grading superintendents and any other Berra Company employees responsible for supervising the installation or maintenance of BMPs, and SWPPP Preparers shall maintain a current certification in order to continue performing their duties under this Decree.

f. The Training Plan shall require all Storm Water Managers (other than SWPPP Preparers), grading superintendents, sewer and water installation foremen, and any other employees of the Berra Companies responsible for supervising the installation or maintenance of BMPs to be certified as Storm Water Trained within thirty days of the EPA's approval of the Training Plan, or prior to beginning work at a Site, whichever is later.

g. The Training Plan shall require SWPPP Preparers to be certified as Storm Water Trained within forty-five days of EPA's approval of the Training Plan or prior to each SWPPP Preparer beginning work at the Site (including preparation of a SWPPP), whichever is later.

h. The Training Plan shall identify the qualifications of the instructor of each course required by this Paragraph and shall provide that each instructor is at least Storm Water Trained.

i. The Training Plan shall also require the Company Storm Water Compliance Manager to evaluate the Storm Water Training Program annually and determine whether any changes are necessary. A written evaluation of the Storm Water Training Program and a description of any significant proposed changes for EPA's approval shall be included in the October 1st Compliance Summary Report.

j. EPA, after consultation with the State, shall approve the Berra Companies' proposed Training Plan provided that the Plan (i) ensures that individuals who have completed each course will be able to adequately identify and implement storm water sediment and erosion control practices and effectively instruct employees and contractors in the implementation of such practices and (ii) meets the requirements of this Paragraph. If EPA disapproves the Storm Water Training Plan, the Berra Companies shall correct the Plan as directed by EPA or invoke the procedures set forth in Section VII (Dispute Resolution). Once EPA has approved the Berra Companies' proposed Training Plan, the Berra Companies shall implement the Plan in accordance with its provisions.

42. Contractor and Storm Water Consultant Compliance. The Berra Companies and CMB shall require Contractor and Storm Water Consultant compliance with applicable Storm Water Requirements and instructions by the Storm Water Compliance Managers. The Berra Companies and CMB shall require the designation of one individual as the Contractor Supervisor or Storm Water Consultant Supervisor for purposes of storm water compliance at the Site.

43. Corporate Acquisition. After the Date of Entry, in the event that any Berra Company acquires or merges with another company, sixty days after the closing of the transaction, the acquired or merged company shall be deemed a Berra Company for purposes of this Decree. Nothing in this Paragraph relieves any Berra Company of its duty to comply with applicable law including Applicable Permits.

44. Submission of Records to Plaintiffs.

a. Upon any Plaintiff's request for a Record, within fifteen (15) Business Days, the Berra Companies and CMB shall provide a copy, as set forth in Paragraph 17

(Notices), of any Record required under this Decree. This Paragraph does not apply to requests for a Record made during an inspection by any of Plaintiffs or their authorized representatives.

b. A Berra Company or CMB shall certify any Record submitted to Plaintiffs in accordance with the certification requirements set forth at 40 C.F.R. § 122.22. A Storm Water Manager shall be a "duly authorized representative" if the requirements of 40 C.F.R. § 122.22 are met.

### III. MITIGATION AND REMEDIATION

#### 45. After-the-Fact Permit.

a. Within 15 days of the Date of Entry, the Berra Companies and JMB No. 2, LLC shall submit to the U.S. Army Corps of Engineers a complete application for an after-the-fact permit pursuant to 33 U.S.C. § 1344 for the placement of a silt fence and other fill materials in Caulk's Creek.

b. The Berra Companies and JMB No. 2, LLC shall take all other actions necessary to obtain an After-the-Fact Permit.

c. The Berra Companies and JMB No. 2, LLC shall fully comply with all terms and conditions of any such permit that is issued.

d. Within thirty days of the Date of Entry, the Berra Companies and JMB No. 2, LLC shall submit a Restoration Plan prepared by a Professional Engineer to EPA for review and approval. The Restoration Plan shall include:

i. an analysis of the hydrology of the discharge sites and/or areas impacted by the placement of a silt fence and other fill materials in Caulk's Creek, that is presented in sufficient detail to determine the areas impacted by the discharges, quantity of flows

and to provide an adequate basis for review of the Plan;

ii. an identification and description of the design of all drainage control devices (erosion control, dams, etc.) that control drainage into the areas impacted by the placement of a silt fence and other fill materials in Caulk's Creek;

iii. an identification of all areas of the tributary of Caulks Creek directly impacted by the placement of a silt fence and other fill materials in Caulk's Creek (i.e., that have suffered erosion, backup of water, overcutting by water), and downstream areas impacted by sedimentation from the Enclaves at Cherry Hill up to the discharge to Upper Lake Chesterfield;

iv. a description of the work required to remove the silt fence and other fill materials in the tributary to Caulk's Creek and to restore the tributary of Caulks Creek to pre-discharge configurations;

v. a description of the types of equipment that will be used in performing the restoration as well as designated upland disposal locations for the removed fill including a description of Best Management Practices to protect the environment during the work;

vi. an evaluation of the alternatives for bank stabilization, and selection of an appropriate method(s) of bank stabilization designed to prevent future erosion;

vii. an identification of any additional proposed areas of fill within the tributary of Caulks Creek that are required to implement the Restoration Plan and shall describe compaction and surface stabilization methods for such proposed fill areas. Specifically, the Restoration Plan shall identify the work required to fill the created channel and to restore flow

solely to the original channel of the tributary of Caulks Creek; and

viii. a schedule of no more than twelve months to accomplish the removal of the fill and the restoration and stabilization of areas impacted by the fill, except that additional time may be approved to establish sufficient vegetation.

e. EPA shall review and approve or disapprove the Restoration Plan. If EPA disapproves the Restoration Plan, the Berra Companies and JMB No. 2, LLC shall correct the Restoration Plan as directed by EPA or invoke the procedures set forth in Section VII (Dispute Resolution). Once EPA has approved the Restoration Plan, the Berra Companies and JMB No. 2, LLC shall implement the Plan in accordance with its provisions.

46. Mitigation and Remediation at Countryshire.

a. Within sixty days of the Date of Entry, the Berra Companies and CMB shall submit to MDNR for its review and approval, a proposed model to be used in the evaluation of the water quality and deposits of silt in Foxwood Estates Lake and tributaries connected to the Countryshire development. The Berra Companies and CMB agree to reimburse the MDNR's costs in reviewing the proposed model, up to Five Thousand Dollars (\$5000.00). Within sixty days of the MDNR's approval of the proposed model, the Berra Companies and CMB shall complete the modeling of the water quality and deposits of silt in Foxwood Estates Lake and tributaries connected to the Countryshire development and submit to the MDNR a proposed remediation plan for the Foxwood Estates Lake and the tributaries connected to the Countryshire development. The remediation plan shall, at a minimum, describe a work plan which shall include a schedule to complete the work, identify any federal, state, and local permits that may be required to conduct the work, and a detailed estimate of the costs of implementing the work plan.

b. MDNR shall review and approve or disapprove the remediation plan. If MDNR disapproves the remediation plan, the Berra Companies and CMB shall correct the remediation plan as directed by MDNR or invoke the procedures set forth in Section VII (Dispute Resolution). The Foxwood Lake Homeowners Association shall be allowed to review and comment on the proposed remediation plan prior to MDNR approval.

c. Within thirty days of MDNR's approval of the remediation plan, the Berra Companies and CMB shall obtain enforceable and assignable bids to implement the remediation plan from three qualified contractors and submit such bids to MDNR. Included in the bid price will be the cost to obtain a performance bond. MDNR shall designate to the Berra Companies and CMB the lowest and best cost bid which includes all elements of the approved remediation plan. Upon MDNR's designation of the lowest and best cost bid, the Berra Companies and CMB shall deposit 110% of the designated bid price in an interest-bearing escrow account approved by MDNR and assign the bid to either MDNR or to the Foxwood Lake Homeowners Association, at MDNR's direction. The terms of the escrow account shall provide that MDNR must approve all disbursements from the account and that the funds may be withdrawn by MDNR or the Foxwood Lakes Home Owners Association only to implement the department approved remediation plan or to otherwise address water quality in Foxwood Estates Lake. The terms of the escrow account shall also provide that upon termination of this Decree, any remaining funds in the escrow account shall be deposited in the Natural Resource Protection Fund established under 644.220, RSMo.

47. Release of Bond for the Enclaves at Cherry Hills. Upon receipt by the Berra Companies and the City of a signed release by the Trustees of the Harbors at Lake Chesterfield

Home Owners' Association in substantially the same form as set forth in Appendix F (Release by Homeowners), the Berra Companies and JMB No. 2, LLC shall make a cash payment of the estimated cost of removing the sediment from Lake Chesterfield in the amount of \$100,000 to the Trustees of the Harbors at Lake Chesterfield Home Owners' Association, Attn: Teresa Haire, P.O. Box 457, Wildwood, Missouri 63040. The Berra Companies shall forward proof of receipt of payment to Plaintiffs within ten days after delivery is accomplished. Within ten days after receipt of confirmation that the payment required by this Paragraph has been made, the City shall release the bond posted by JMB No. 2, LLC for damages arising from the development of the Enclaves at Cherry Hill and shall not require additional security from JMB No.2, LLC relating to development activities at or any condition at the Enclaves of Cherry Hills prior to the date the City executes this Consent Decree.

48. Investigation Costs.

a. Within twenty days of the Date of Entry, the Defendants shall reimburse the State for its investigation and enforcement costs in the amount of \$2,442.19. Payment shall be made to by check payable to the "Missouri Department of Natural Resources" and forwarded to:

JoAnn Horvath  
Collections Specialist  
Office of the Attorney General of Missouri  
P.O. Box 899  
Jefferson City, MO 65102-0899.

b. Within twenty days of the Date of Entry, the Defendants shall reimburse the City for its investigation and enforcement costs in the amount of \$50,000. Payment shall be made to City of Wildwood, Wildwood City Hall, 16962 Manchester Road, Wildwood, Missouri

63040.

49. Dismissal of Related Litigation. Within thirty days of the Date of Entry, JMB No. 2, L.L.C. and the City shall file a Joint Stipulation of Dismissal of All Remaining Claims in *JMB No. 2, L.L.C. v. Thibeault*, No. 04CC-000563 (St. Louis County Cir. Ct.) ("County Litigation") in the form attached hereto as Appendix G (Dismissal Stipulation). Defendants further agree that they shall not hereinafter reassert the claims or defenses raised in the County Litigation and hereby further covenant not to sue or file an administrative action for the claims alleged by any of the Defendants in that action, including but not limited to any challenge to the facial validity or enforceability of any provision in Chapter 425 of the City Code; provided that Defendants retain the right to challenge the lawfulness of any specific future application of Chapter 425 by the City to any specific future activity. Within forty-five days of the Date of Entry, the City shall dismiss with prejudice its counterclaims in the County Litigation, except that the City's Counterclaim Count I and II shall be dismissed without prejudice.

50. Resolution of State Matters.

a. Notwithstanding the MDNR letters of February 14, 2006 and March 13, 2006, MDNR agrees that the Berra Companies may obtain coverage under the General Permit for the proposed developments at Peppermill (Lemay Ferry Road at Navajo Dr., St. Louis, MO 63125), Ashton Park (Business Loop 44 at Hornek Rd., Eureka, MO 63069), and Eureka Commons (West Main Street at Allenton Rd., Eureka, MO 63069), so long as (1) the Berra Companies comply with all the requirements of Section II (Compliance Program) of this Consent Decree. With respect to any other Sites for which the Berra Companies or a Berra Related Company have not yet applied for permit coverage, MDNR agrees that it will grant the Berra

Companies and/or Berra Related Company coverage under the General Permit to the same extent as any other similarly situated site, subject to MDNR's authority to require site specific permits under the Missouri Clean Water Law and regulations. With respect to Renewal Sites, MDNR agrees that it will grant the Berra Companies and/or the Berra Related Company coverage under the General Permit. The issuance by MDNR of authorization to proceed under the General Permit shall not in any way relieve the Berra Companies from the obligation to comply with the terms of this Consent Decree. MDNR reserves the right to require a Site-specific permit for any Site, including but not limited to any Renewal Site, should any one of the Berra Companies or Berra Related Companies engage in a pattern of violations of Storm Water Requirements at that Site.

b. The Defendants agree not to appeal or challenge the Missouri General Permit, but reserve the right to appeal Site-specific permitting decisions by MDNR and EPA at individual Sites in accordance with law. Defendants also agree to dismiss *JBA Eureka, LLC v. Department of Natural Resources and Doyle Childers, Director*, No. 07-0244 CWC (Administrative Hearing Commission, *JBA Eureka, LLC v. Department of Natural Resources and Doyle Childers, Director*, No. 07-0243 CWC (Administrative Hearing Commission)).

51. Sampling Program for Eureka Commons and Ashton Park

a. Within thirty days of the Date of Entry, the Berra Companies shall submit a trial sampling program developed for the Eureka Commons and Ashton Park developments to the MDNR for review and approval. The sampling program shall be implemented for six months after approval of the program and shall provide for the following:

i. Samples shall be representative of the flow and characteristic of the

discharge and shall measure the following parameters. (1) Turbidity shall be measured in Nephelometric Turbidity Units (NTUs) and analysis shall be performed in accordance with EPA Analytical Method 180.1. (2) Settleable Solids (SS) shall be performed in accordance with EPA Analytical Method 160.5.

ii. The program shall identify all sampling points on a site map and shall require sampling points to be clearly marked in the field with a flag, tape, stake or other visible marker. The program shall also identify sampling frequency.

iii. The program shall also identify benchmarks which shall not be enforceable effluent limits and corrective action to be taken in response when measured levels are greater than the benchmark levels.

iv. The program shall require the Berra Companies to retain copies of all results of any Site discharge monitoring and analysis and shall produce the records upon request by MDNR or EPA representatives if they request a copy in the performance of their official duties. After final stabilization the records shall be maintained at the Berra Companies main office and shall be retained for a period of at least three years from the date of the Letter of Termination.

b. MDNR shall review and approve or disapprove the sampling program. If MDNR disapproves the program, the Berra Companies shall correct the sampling program as directed by MDNR or invoke the procedures set forth in Section VII (Dispute Resolution). Upon MDNR's approval of the program, the Berra Companies shall implement the program according to its terms.

c. Within thirty days following the six months of implementation of the

sampling program as approved by MDNR, the Berra Companies shall submit a report that discusses the results of the sampling and the Berra Companies practices in response to the sample results. The Berra Companies may propose to 1) continue the program for an additional six months, 2) alter the program for an additional six months, or 3) discontinue the program if sample results are not useful for BMP enhancement. MDNR shall review and approve or disapprove the report and Berra shall implement MDNR's decision regarding the report, subject to the Berra Companies' right to invoke the procedures set forth in Section VII (Dispute Resolution).

#### IV. CIVIL PENALTY

52. Civil Penalty . Within 30 days after the Date of Entry, Defendants shall pay a civil penalty of \$590,000.

53. Method of Payment . Payment of such penalty shall be made in the following manner:

a. Defendants shall forward \$295,000 to the "Treasurer of the United States" by Electronic Funds Transfer ("EFT" or wire transfer) to the United States Department of Justice lock box bank, referencing DOJ # 90-5-1-1-08444 and the civil action number. A confirmation of such transfer shall be forwarded to the United States at the addresses specified in Paragraph 17 (Notices).

b. Defendants shall submit \$295,000 to the State of Missouri in three separate certified checks in the amount of \$98,333.33 each. One check shall be made payable to each of the following: (1) to the "State of Missouri (St. Charles County School Fund)," (2) to the "State of Missouri (Jefferson County School Fund)," and (3) to the "State of Missouri (St. Louis

County School Fund)". Defendants shall mail the three checks to JoAnn Horvath, Collections Specialist, Office of the Attorney General of Missouri, P.O. Box 899, Jefferson City, MO 65102-0899.

c. No portion of the civil penalty paid pursuant to this Decree may be used to reduce any Defendant's federal or state tax liability.

54. Additional Penalty. In addition to the payment required by Paragraph 52 (Civil Penalty), JMB No. 2, LLC shall, within ten days of the Date of Entry, pay to the City of Wildwood a penalty of \$300.00 related to the July 2003 sale of unplatted land to the Rockwood School District in violation of Chapter 420, Section 1005.030 of the City Code. Payment shall be made to City of Wildwood, Wildwood City Hall, 16962 Manchester Road, Wildwood, Missouri 63040.

#### V. STIPULATED PENALTIES

55. Stipulated Penalty Amounts. Plaintiff(s) may use the reports submitted by any Defendant or information gathered by any Plaintiff to identify violations for which stipulated penalties may be assessed. For each of the instances listed below, if the Berra Companies or CMB fail to comply fully and timely with the requirements of this Decree or the Applicable Permit, upon written demand of any Plaintiff for violations that occurred within the geographic boundaries of that Plaintiff, the Berra Companies and CMB shall pay stipulated penalties in the following tiered amounts:

a. Failure to comply with any requirement of Paragraphs 26 (Compliance), 29 (Permits), 31 (Criteria for Grading and Clearing), 32 (Criteria for Stabilization), 33 (Criteria for Sedimentation Basins and Detention Ponds), 34 (Construction Entrances and Exits),

Paragraph 35 (Pre-Construction Inspection and Review), 36 (Inspections), 37 (Maintenance), 38 (Site Storm Water Compliance Review and Oversight), 41 (Storm Water Training Program), 42 (Contractor and Storm Water Consultant Compliance), or any Paragraph of Section III (Mitigation and Remediation):

<u>Days</u>	<u>Stipulated Penalty</u>	
1st through 7th days	\$ 750	per violation per day
8th through 14th days	\$1,500	per violation per day
Greater than 14 days	\$2,500	per violation per day

b. Failure to comply with any requirement of Paragraphs 18 (Certification of Reports and Submissions), 27 (Designation of Storm Water Compliance Managers), 28 (List of Sites), 30 (Storm Water Plans and Records), 39 (Compliance Summary Report); 43 (Corporate Acquisition); 44 (Submission of Records to Plaintiffs):

<u>Days</u>	<u>Stipulated Penalty</u>	
1st through 7th days	\$ 500	per violation per day
8th through 14th days	\$1,000	per violation per day
Greater than 14 days	\$2,000	per violation per day

56. Payment of Stipulated Penalties. All penalties owed to Plaintiffs under this Section shall be due and payable within thirty days of the Defendant's receipt from any Plaintiff of a demand for payment of the penalties, unless such Defendant invokes the procedures under Section VII (Dispute Resolution). Any Plaintiff may, in the exercise of its unreviewable discretion, waive its right to any or all of its portion of the stipulated penalty amount or its investigation and enforcement costs.

a. The Berra Companies shall submit fifty percent of the stipulated penalty amount due to the United States by EFT to the United States Department of Justice lockbox bank referencing DOJ case number 90-5-1-1-08444 and the civil action number. Payment shall be made in accordance with instructions provided by the United States upon entry of this agreement. Any EFTs received at the United States Department of Justice lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next Business Day. After payment, the Defendant shall mail a cover letter specifying the amount and date of payment, civil action number, DOJ case number 90-5-1-1-08444 and reason for payment, to the United States in accordance with Paragraph 17 (Notices).

b. The Berra Companies shall submit fifty percent of the stipulated penalty amount due to the State by certified check made payable to the "State of Missouri," and mailed to JoAnn Horvath, Collections Specialist, Office of the Attorney General of Missouri, P.O. Box 899, Jefferson City, MO 65102-0899. If the stipulated penalties arise from violations that occurred at a Site within the State of Missouri and the demand for stipulated penalties was made by the State and accompanied by an invoice identifying the State's investigation and enforcement costs, including reasonable attorney's fees, the Defendant shall also remit to the State the full amount of such investigation and enforcement costs via the same, or separate, certified check made payable to the "State of Missouri," and mailed to JoAnn Horvath, Collections Specialist, Office of the Attorney General of Missouri, P.O. Box 899, Jefferson City, MO 65102-0899. After any payment, Defendants shall mail a cover letter specifying the amount and date of payment, civil action number, and reason for payment, to the State of Missouri in accordance with Paragraph 17 (Notices).

c. If the stipulated penalties arise from violations that occurred at a Site within the City and the demand for stipulated penalties was made by the City and accompanied by an invoice identifying the City's investigation and enforcement costs, in addition to the payment of Stipulated Penalties in accordance with subparagraphs a and b, the Defendant shall also remit to the City the full amount of its investigation and enforcement costs or an amount equivalent to the stipulated penalties demanded, whichever is less.

57. Accrual of Stipulated Penalties. Stipulated penalties shall begin to accrue on the day after performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. For each separate violation of this Decree, only one stipulated penalty shall accrue for each day of that violation. Nothing herein, however, shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree. Penalties shall accrue regardless of whether Plaintiffs have notified a Defendant of a violation.

58. No Effect on Obligation to Comply. The payment of penalties shall not alter in any way each Defendant's obligation to comply with the requirements of this Decree.

59. Effect of Dispute Resolution. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the United States that is not appealed to this Court, the Defendant shall pay accrued penalties determined to be owing to Plaintiffs within 15 days of the agreement or the receipt of the United State's decision or order;

b. If the dispute is appealed to the Court and Plaintiffs prevail in whole or in

part, the Defendant shall pay all accrued penalties determined by the Court to be owed to Plaintiffs within 30 days of receipt of the Court's decision or order, except as provided in subparagraph c of this Paragraph;

c. If the Court's decision is appealed by any party, the Defendant shall pay all accrued penalties determined by the District Court to be owing to Plaintiffs into an interest-bearing escrow account within 30 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 30 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to Plaintiffs or to the Defendant to the extent that they prevail.

60. Interest on Late Payment. If any Defendant fails to pay stipulated penalties when due, such Defendant shall pay interest accrued at the rate established by the Secretary of the Treasury under 31 U.S.C. § 3717 beginning upon the day the stipulated penalties were due.

61. Non-Exclusivity of Remedy . Stipulated penalties are not Plaintiffs' exclusive remedy for violations of this Decree. Plaintiffs expressly reserve the right to seek any other relief they deem appropriate, including but not limited to, action for statutory penalties, contempt, or injunctive relief against a Defendant. In addition, each Plaintiff expressly reserves and each Defendant acknowledges each Plaintiff's right to issue appropriate administrative orders, including orders to cease and desist construction activities as otherwise authorized by law.

## VI. FORCE MAJEURE

62. Required Notification for Force Majeure. A Defendant shall notify Plaintiffs orally and by electronic or facsimile transmission as soon as possible, but not later than seventy-two hours after the time such Defendant first knew of, or in the exercise of reasonable diligence

under the circumstances should have known of, any event which might constitute a Force Majeure Event. Such Defendant shall make the oral notification required by this Paragraph by calling Diane Huffman, Chief, Water Enforcement Branch at the number specified in Paragraph 17 (Notices) and Kevin Mohammadi, Chief of Compliance and Enforcement, Water Pollution Control Program, Water Protection Branch and sending Ms. Huffman and Mr. Mohammadi a message by electronic mail at the address provided in Paragraph 17 (Notices). If either Ms. Huffman or Mr. Mohammadi is not available by telephone, such Defendant may satisfy the telephone notice requirement by leaving a message for that individual stating that such Defendant had called to notify him or her pursuant to this Paragraph. The United States and the State each may designate an alternative representative to receive oral notification at its discretion by sending each Defendant a written designation in accordance with Paragraph 17 (Notices). The written notice a Defendant submits pursuant to this Paragraph shall indicate whether such Defendant claims that the delay should be excused due to a Force Majeure Event. The notice shall describe in detail the basis for such Defendant's contention that it experienced a Force Majeure Event, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Such Defendant shall adopt all reasonable measures to avoid or minimize such delay. Failure to so notify Plaintiffs shall render this Section VI (Force Majeure) void and of no effect as to the event in question, and shall be a waiver of such Defendant's right to obtain an extension of time for its obligations based on such event.

63. Procedures for Extension. If the United States finds that a delay in performance is, or was, caused by a Force Majeure event, Plaintiffs shall extend the time for performance, in

writing, for a period to compensate for the delay resulting from such event, and stipulated penalties shall not be due for such a period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section VII (Dispute Resolution) shall apply, and the Defendants shall have the burden of proving that the delay is, or was, caused by a Force Majeure event and that the amount of additional time requested is necessary to compensate for that event.

64. Effect on Other Obligations. Compliance with a requirement of this Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date. Each Defendant shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

## VII. DISPUTE RESOLUTION

65. Exclusive Remedy. Unless otherwise expressly provided for in this Decree, the Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Decree. However, the procedures set forth in this Section shall not apply to actions by any Plaintiff to enforce obligations of any Defendant that have not been disputed in accordance with this Section.

66. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen on the day a Defendant hand delivers the United States, the State and, if the activity under dispute occurs in the City, the City, a written Notice of Dispute or on the day following delivery by overnight courier, or three days following delivery by U.S. Mail. Such Notice of Dispute shall

state clearly the matter in dispute. The period of informal negotiations shall not exceed sixty days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States after consultation with the State and, if the activity under dispute occurs in the City, the City shall be considered binding unless, within 45 days after the conclusion of the informal negotiation period, the Defendant invokes formal dispute resolution procedures set forth in Paragraph 67 (Formal Dispute Resolution).

67. Formal Dispute Resolution.

a. Within 45 days after the conclusion of the informal negotiation period, a Defendant may invoke formal dispute resolution procedures by serving on the United States, the State and, if the activity under dispute occurs in the City, the City, a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the Defendant's position and all supporting documentation relied upon by such Defendant.

b. The United States, after consultation with the State and City (where the activity under dispute occurs within the City), shall serve its Statement of Position within 45 days of receipt of such Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the United States. The State and the City (where the activity under dispute occurs within the City) may serve a Statement of Position. The United States' Statement of Position shall be binding on the Defendant, unless the Defendant files a motion for judicial review of the dispute in accordance with Paragraph 68 (Petitions to the

Court).

68. Petitions to the Court . In the event that the parties cannot resolve a dispute as set forth in Paragraph 67 (Formal Dispute Resolution), the following procedures shall control:

a. A Defendant may seek judicial review of the dispute by filing with the Court and serving on Plaintiffs a motion requesting judicial resolution of the dispute. The motion shall be filed within 45 days of receipt of the United States' Statement of Position set forth in Paragraph 67 (Formal Dispute Resolution). The motion shall contain a written statement of the Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Decree.

b. The United States shall respond to the Defendant's motion within 45 days of receipt of the motion, unless the parties stipulate otherwise. Each of the other Plaintiffs may file its own response to a Defendant's motion.

c. The Defendant may file a reply memorandum within 30 days of receipt of the United States' response.

d. In any dispute under this Paragraph, the Defendant shall bear the burden of demonstrating that its position complies with and furthers the objectives of the Storm Water Requirements. The United States reserves the right to argue that its position is reviewable only on the administrative record and shall be upheld unless arbitrary and capricious or otherwise not in accordance with law. For purposes of this Decree, the administrative record shall comprise the Statements of Position exchanged by the Parties pursuant to Paragraph 67 (Formal Dispute Resolution), including any documents attached to or incorporated by reference in those

Statements.

69. Effect on Other Obligations . The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of any Defendant under this Decree not directly in dispute, unless each Plaintiff agrees in writing or the Court orders otherwise.

#### VIII. EFFECT OF SETTLEMENT

70. Covenants Not to Sue by Plaintiffs.

a. In consideration of the payment of the penalty required by Paragraph 52 (Civil Penalty) and the full and satisfactory compliance by each Defendant with the terms of this Decree, the United States, the State, and the City hereby covenant not to sue or take administrative action against each Defendant for the civil violations that occurred prior to the date of lodging this Decree as alleged against that Defendant in the Complaint and Complaint-in-Intervention. The United States, the State, and the City also hereby covenant not to sue or take administrative action against each member of JMB No. 2, LLC and CMB in their capacity as members of JMB No. 2, LLC and CMB for civil violations through the date of lodging this Decree as alleged against JMB No. 2, LLC and CMB in the Complaint and Complaint-in-Intervention.

b. In consideration of the payment of the penalty required by Paragraph 52 (Civil Penalty) and the full and satisfactory compliance by each Defendant with the terms of this Decree, the United States, the State, and the City hereby covenant not to sue or take administrative action against each Defendant for civil penalties for any civil violations of the storm water requirements of the Missouri General Permit, the Clean Water Act, or the Missouri

Clean Water Law at those Sites described in the Berra Companies' October 16, 2006 response to EPA's information request pursuant to 33 U.S.C. § 1318 through the date of lodging of this Decree. Those Sites are: Kendall Bluff, Hawkins Bend, Bridgeton Trails, Ashton Woods, Springhurst, Harter Farms, Twin Oaks, Brighton Park, Creekside, and Winchester Place.

c. The City hereby covenants not to sue each Defendant for civil violations of the Chapter 425 of the City Code and Chapter 420 of the City Code as it relates to the Enclaves at Cherry Hills, each as to violations occurring prior to the date of lodging of this Consent Decree.

d. These covenants not to sue shall take effect only when each and every one of the following conditions has been met: (i) Plaintiffs have received payment of the civil penalty required by Paragraphs 52 (Civil Penalty) and 54 (Additional Penalty); (ii) Plaintiffs have received payment of enforcement costs required by Paragraph 48 (Investigation Costs); and (iii) *JMB No. 2, L.L.C. v. Thibeault*, No. 04CC-000563 (St. Louis County Cir. Ct.) has been dismissed with prejudice and the injunction in that matter has been vacated in accordance with the requirements of Paragraph 49 (Dismissal of Related Litigation).

e. These covenants not to sue are further conditioned upon the complete and satisfactory performance by each Defendant of its obligations under this Decree.

71. No Effect on Third Parties. This Decree does not limit or affect the rights of Plaintiffs or Defendants against any third parties not party to this Decree, nor does it limit the rights of third parties against Defendants except as otherwise provided by law. This Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.

72. Plaintiffs' Reservations of Rights. Each Plaintiff reserves all legal and equitable remedies available to enforce the provisions of this Decree. This Decree shall not be construed to limit any right to obtain penalties or injunctive relief available to each Plaintiff under the Clean Water Act, or implementing regulations, or under other federal, State, or local laws, regulations, or permit conditions, except as expressly specified herein.

73. No Waiver of Sovereign Immunity. Nothing in this Decree shall create a cause of action against any Plaintiff nor shall anything in this Decree be deemed to waive the sovereign immunity of any Plaintiff.

74. Defendants' Covenants Not to Sue. Each Defendant hereby covenants not to sue each Plaintiff for any actions undertaken by that Plaintiff through the date of lodging of this Consent Decree at or in connection with any of the following sites: the Enclaves at Cherry Hill, Countryshire, Seckman Lakes, Kendall Bluff, Hawkins Bend, Bridgeton Trails, Ashton Woods, Springhurst, Harter Farms, Twin Oaks, Brighton Park, Creekside, Winchester Place, Eureka Commons, Ashton Park, Whispering Pines, and Peppermill.


SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007

---


UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of the Decree in United States, et al. v. J.H. Berra Holding Co., Inc., subject to the public notice requirements of 28 C.F.R. §50.7.

FOR THE UNITED STATES OF AMERICA:

Date: 29 June 2007   
RONALD J. TENPAS  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

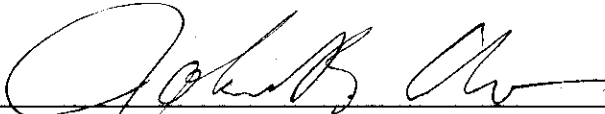
Date: July 12, 2007   
ERIC D. ALBERT

Date: 12 July 2007   
SARAH D. HIMMELHOCH  
Trial Attorneys  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
(202) 514-2800

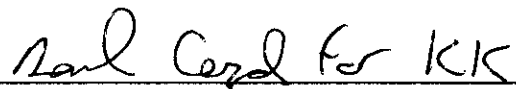
WE HEREBY CONSENT to the entry of the Decree in United States, et al. v. J.H. Berra Holding Co., Inc., subject to the public notice requirements of 28 C.F.R. §50.7.

FOR THE UNITED STATES OF AMERICA:

6/4/07  
Date

  
\_\_\_\_\_  
JOHN B. ASKEW  
Regional Administrator  
U.S. Environmental Protection Agency, Region VII  
901 N. 5th Street  
Kansas City, KS 66101


6/4/07  
Date

  
\_\_\_\_\_  
KRISTINA M.G. KEMP  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region VII  
901 N. 5th Street  
Kansas City, KS 66106

WE HEREBY CONSENT to the entry of the Decree in United States, et al. v. J.H. Berra Holding Co., Inc., subject to the public notice requirements of 28 C.F.R. §50.7.

FOR THE UNITED STATES OF AMERICA:

JUNE 15, 2007  
Date

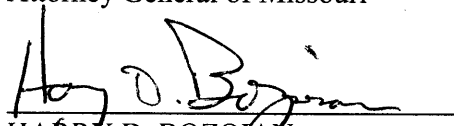
  
GRANT Y. NAKAYAMA  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

WE HEREBY CONSENT to the entry of the Decree in United States, et al. v. J.H. Berra Holding Co., Inc., subject to the public notice requirements of 28 C.F.R. §50.7.


FOR THE STATE OF MISSOURI:

7/2/07  
Date

JEREMIAH W. (Jay) NIXON  
Attorney General of Missouri

  
HARRY D. BOZOLAN  
Deputy Chief Counsel  
Missouri Attorney General

7/10/07  
Date

  
Daniel R. Schuette  
Director  
Division of Environmental Quality  
Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102-0176

WE HEREBY CONSENT to the entry of the Decree in United States, et al. v. J.H. Berra  
Holding Co., Inc., subject to the public notice requirements of 28 C.F.R. §50.7.

FOR THE CITY OF WILDWOOD:

June 11<sup>TH</sup>  
2007

Date

Edward L Marshall

WE HEREBY CONSENT to the entry of this Decree in United States, et al. v. J.H. Berra

Holding Co., Inc.

FOR J.H. BERRA CONSTRUCTION CO., INC.

BY: [Signature] 5/30/07  
John H. Berra, Jr.

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Typed Name: Gregory Smith  
Title: Husch & Eppenberger, LLC  
Address: 190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105

FOR JHB PROPERTIES, INC.

BY: [Signature] 5/30/07  
John H. Berra Jr.

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Typed Name: Gregory Smith  
Title: Husch & Eppenberger, LLC  
Address: 190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105

FOR J.H. BERRA HOLDING CO., INC.

BY: [Signature] 5/30/07  
John H. Berra, Jr.

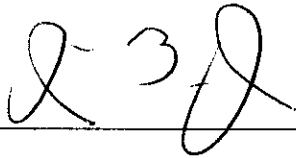
Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Typed Name: Gregory Smith  
Title: Husch & Eppenberger, LLC  
Address: 190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105

WE HEREBY CONSENT to the entry of this Decree in United States, et al. v. J.H. Berra  
Holding Co., Inc.

FOR JMB No. 2, LLC:

Date: 5/30/07



Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Typed Name: Gregory Smith

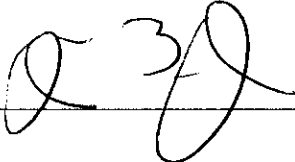
Title: Husch & Eppenberger, LLC

Address: 190 Carondelet Plaza, Suite 600

St. Louis, MO 63105

WE HEREBY CONSENT to the entry of this Decree in United States, et al. v. J.H. Berra  
Holding Co., Inc.

FOR CMB RHODES, LLC:

Date: 5/30/07 

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Typed Name: Gregory Smith

Title: Husch & Eppenberger, LLC

Address: 190 Carondelet Plaza, Suite 600

St. Louis, MO 63105

## APPENDIX A: SWPPP CRITERIA

## INSTRUCTIONS FOR STORM WATER PLAN PREPARATION

All SWPPPs shall comply with the terms and conditions of the Applicable Permit and Local Law and: (i) utilize BMPs appropriate for the specific Site conditions at all stages of construction; (ii) select BMPs designed to be effective in eliminating or significantly minimizing pollutants in storm water discharges from the Site; (iii) utilize an adequate combination of erosion and sediment control BMPs; (iv) connect the use of BMPs to specific construction activities and to a time schedule triggered by those activities; (v) provide separate plan sheets for clearing and mass grading, utility and road installation, and building activities; (vi) provide narrative descriptions of the inspection and repair procedures to ensure BMPs are kept in effective operating condition; (vii) provide narrative descriptions of BMPs to explain the basis for BMP selection; and (viii) include methods for preventing non-storm water discharges.

The guidelines below are intended to aid personnel in contracting for consulting services for the preparation of Storm Water Pollution Prevention Plans (SWPPP).

### Abbreviations

EPA	Environmental Protection Agency
NPDES	National Pollutant Discharge Elimination System
SWPPP	Storm Water Plan
NOI	Notice of Intent
NOT	Notice of Termination
MS4	A municipal separate storm water collection system
BMP	Best Management Practice

### Performance Guidelines

There are three performance guidelines to which SWPPPs should conform. They should:

1. **Meet regulatory requirements.** In states where the Federal EPA has authorized the state to implement the requirements of the federal NPDES program, "regulatory requirements" are defined as the latest edition of the state's general permit for discharges from large and small construction sites or an individual permit. In states where the Federal EPA has retained authority over the NPDES program or otherwise continues to issue NPDES permits (e.g. on tribal lands), "regulatory requirements" are defined as the latest edition of the "National Pollution Discharge Elimination System (NPDES) General Permit for Discharge from Large and Small Construction Activities" or an individual permit.

2. **Be easy to follow and implement.** It is important that the SWPPP be written in such a manner that it is easy for the Berra Companies operational personnel to understand and implement. The SWPPP should not be prepared in a vacuum by the consultant, but should reflect discussions and agreements that have been made between the consultants and the Berra Companies' operational personnel. These discussions and agreements should include such things as construction sequencing and types of Best Management Practices (BMPs) that each Berra Company feels are the most cost effective and easiest to maintain.
3. **Be efficient.** There maybe several ways in which the reduction of pollutants from storm water discharges can be achieved in order to comply with Storm Water Requirements. It is the goal of the Berra Companies to achieve compliance in the most efficient manner possible. When analyzing efficiency, initial costs should be combined with long-term costs (including operation and maintenance costs and potential replacement costs) to determine the appropriate solution for each situation.

#### Contents of the SWPPP (Checklist)

#### **I. A Copy of the NOI and Other Storm Water Related Permits that are required for the Site.**

Copies of any federal, state or local storm water related permits should be included with the SWPPP. Questions that need to be addressed and answered in this section include:

- a) What storm water permits do I need?
- b) Do my subcontractors need separate permits or can they be covered under my permit?

#### **II. Storm Water Pollution Prevention Plan (SWPPP) Certification. The SWPPP must be certified as per the Applicable Permit. Check the Applicable Permit to see which of the following signatures are required.**

- a) Signed by the owner of the Site.
- b) Signed by the operator of the Site.
- c) Signed by the Registered Professional Engineer who is responsible for the preparation of the SWPPP.

An example of a Title Block for the certification is as shown below:

ABC XYZ 123 HOMES,  
A Delaware corporation,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

### **III. Contact Information**

The SWPPP shall include the names, phone numbers and a description of each person's duties for the following individuals. If there is more than one Site Storm Water Compliance Manager for a Site, each Site Storm Water Compliance Manager's responsibilities shall be specified in the SWPPP:

- a) Site Storm Water Compliance Manager
- b) Company Storm Water Compliance Manager
- c) Field Manager for the Site (if different)

### **IV. Notice and Recordkeeping**

- a) Posting NOI.
- b) Location of SWPPP and Inspection Reports.
- c) Retention of Records.

### **V. Responsibilities of Owners and Operators**

If there is more than one permittee at the Site, the SWPPP shall include a list of activities that must be completed by each permittee and who has been assigned to implement each activity.

### **VI. Definition of Permit Area**

Check the Applicable Permit to see which of the following are required:

- a) **Site** name, address, county or governmental subdivision and latitude and longitude of the **Site**.
- b) Name of the water of the United States or MS4 into which the project discharges.
- c) Name of the agency or agencies that have jurisdictional authority for storm water pollution prevention.
- d) The function of the project (i.e., single family detached residential, townhouse, condo development).
- e) A description of any other activities such as dedicated crusher plants, asphalt plants, equipment staging areas, or material storage areas that may operate on the project site.
- f) Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities, including off-site borrow pits and fill areas.

- g) A general location map (e.g., USGS quadrangle map, a portion of a city or county map or other map with enough detail to show the location of the construction site and Jurisdictional Waters within one mile of the site).

## **VII. Site Plan and BMP Map**

Check the Applicable Permit to see which of the following are required:

- a) Direction of storm water flow and approximate slopes anticipated after major grading activities.
- b) Areas of soil disturbance and areas that will not be disturbed.
- c) Locations of major structural and non-structural BMPs.
- d) Locations where stabilization practices are expected to occur.
- e) Locations of off-site material, waste, borrow or equipment storage areas.
- f) Locations of all Jurisdictional Waters.
- g) Locations where storm water discharges to Jurisdictional Waters.
- h) Areas where final stabilization has been accomplished and no further construction-phase permit requirements apply.

## **VIII. Endangered and Threatened Species and Critical Habitat Protection, as required by the Applicable Permit**

## **IX. Historic Properties Protection, as required by the Applicable Permit**

## **X. Statement and Description of Storm Water Discharge Management Controls to Reduce Pollutants**

- a) A description of all pollutant control measures (i.e. BMPs) that will be implemented as part of the construction activity to control pollutants in storm water discharges. Each major activity in the project construction process should be clearly defined and the BMPs related to that activity should be listed. It is recommended that in addition to appearing on a comprehensive map, these also appear on "tear out" sheets that can be posted in the construction office.
- b) A description of interim and permanent stabilization practices for the site, including a schedule of when the practices will be implemented.
- c) Dates when major grading activities occur.
- d) Dates when construction activities temporarily or permanently cease on a portion of the site.
- e) Dates when stabilization measures are initiated.
- f) A description of structural practices to divert flows from exposed soils, retain/detain flows or otherwise limit runoff and/or the discharge of pollutants from exposed areas of the site.
- g) A description of all post-construction storm water management measures that will be installed during the construction process to control pollutants in storm water

- discharges after construction operations have been completed.
- h) A description of the measures to prevent the discharge of solid materials, including building materials, to the Jurisdictional Waters.
  - I) A description of the measures to minimize, to the extent practicable, off-site vehicle tracking of sediments onto paved surfaces and the generation of dust.
  - j) A description of controls and measures that will be implemented to control the storm water discharges from on-site crusher and asphalt plants.

**XI. Description of Non-Storm Water Discharge Management Controls to Reduce Pollutants. Refer to the Applicable Permit for which non-storm water discharges are allowable and which are prohibited. The list below is for discussion purposes only.**

- a) Discharges from fire fighting activities.
- b) Fire hydrant flushing.
- c) Waters used to wash vehicles where detergents are not used.
- d) Water used to control dust.
- e) Water used to flush waterlines and wash down buildings.
- f) Air conditioning condensate.
- g) Uncontaminated spring water, groundwater and discharges from foundation drains.
- h) Uncontaminated excavation dewatering.
- I) Landscape irrigation.

**XII. Procedures for Dealing with Spills, and Releases in Excess of Mandated Reportable Quantities, as required by the Applicable Permit.**

- a) A list of emergency contact numbers.
- b) A table listing types of materials and the reportable quantity of each.
- c) Procedures for dealing with and reporting spills and releases.

**XIII. Maintenance of Storm Water Discharge Management Controls**

A description of the maintenance requirements for the BMPs laid out in the SWPPP.

**XIV. Inspections**

- a) Frequency of inspection.
- b) Standardized forms for inspection reports.

**XV. Procedures for Updating and Modifying the SWPPP**

- a) A statement designating when the SWPPP must be amended.
- b) A statement of the procedure that should be followed to update and modify the

SWPPP.

**XVI. Notice of Termination**

- a) When a NOT is filed.
- b) Procedure for filing a NOT.

APPENDIX B: PRE-CONSTRUCTION INSPECTION FORM

## PROJECT PRE-CONSTRUCTION REVIEW

### Project Information

<b>Company or Division:</b>	
<b>Site Name:</b>	<b>Type of Site:</b>
<b>City in Which Site is Located:</b>	<b>County in Which Site is Located:</b>
<b>Special District in Which Site is Located (if applicable):</b>	<b>State in Which Site is Located:</b>

### Permit Coverage Information

<b>Does the Site need coverage under the Applicable Permit? Yes_____ No___</b>			
<b>If yes, fill in the blocks below. If the answer is "No", the Company Storm Water Compliance Manager must verify that no permit coverage is required and sign below:</b>			
<b>Signature:_____ Date:_____</b>			
<b>Issuing Authority:</b>	<b>Name of Permittee:</b>	<b>Permit No. (if available):</b>	<b>Date of Permit Coverage:</b>

### Contact Information

<b>Site Storm Water Compliance Manager(s):</b>	<b>Tel. No.</b>	<b>Training Verification (including date of last training):</b>
<b>Berra Storm Water Compliance Manager:</b>	<b>Tel. No.</b>	<b>Training Verification (including date of last training):</b>

### Storm Water Plan Information

<b>SWPPP Prepared By:</b>			<b>Date of SWPPP Certification:</b>	
<b>Is the SWPPP certified by the SWPPP Preparer?</b>	<b>Yes</b>	<b>No</b>	<b>Remarks:</b>	<b>Date of Correction:</b>
<b>Has the SWPPP been approved by MDNR?</b>	<b>Yes</b>	<b>No</b>	<b>Remarks:</b>	<b>Date of Correction:</b>

### Site Status

<b>Are all initial-phase BMPs called for by the SWPPP and Applicable Permit properly located and installed?</b>	<b>Yes</b>	<b>No</b>	<b>Remarks:</b>	<b>Date of Correction:</b>
<b>For those Sites where construction has already commenced, are the BMPs working properly and are they appropriate for existing site conditions?</b>	<b>Yes</b>	<b>No</b>	<b>Remarks:</b>	<b>Date of Correction:</b>
<b>Has all Required Training and Orientation occurred as required?</b>	<b>Yes</b>	<b>No</b>	<b>Remarks:</b>	<b>Date of Correction:</b>

*Do not sign this pre-construction review worksheet until all items on this worksheet have been corrected and the date of correction noted. Do not commence Construction Activity until this worksheet has been signed. For the purposes of this form, Construction Activity does not include geotechnical investigations, surveying, environmental testing, plant (vegetation) salvage, or the initial installation of BMPs that are not sediment basins, provided that none of these activities involve significant soil disturbance.*

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

## APPENDIX C: SITE INSPECTION FORM

## User Instructions to Site Inspection Report

### Important

This form consists of the Site Inspection Report and Responsive Action Log. These are legal documents.

1. Only the Site Storm Water Compliance Representative or Storm Water Consultant Designee is permitted to undertake the inspection required by this form. If you are not this person, you must contact the Division Storm Water Compliance Representative immediately.
2. Each Action Item must have a corresponding Responsive Action. An Action Item is a condition that requires action to be taken to achieve or maintain compliance with the Storm Water Requirements. A Responsive Action is an action taken or that is necessary to be taken to achieve or maintain compliance with Storm Water Requirements. **[definitions subject to further refinement]**
3. Before proceeding with any inspection, you must first verify whether all Responsive Actions identified from the prior inspection, if any, are undertaken within the time period allowed by the Applicable Permit and applicable relevant information is recorded for the prior inspection.
4. You must restate or carry over to the current Responsive Action Log any Responsive Action not completed since the last inspection regardless of the time period allowed by the Applicable Permit.
5. You must sign and date the completed Site Inspection Form. If you are a Storm Water Consultant Designee and you complete this form, the Site Storm Water Compliance Representative must review and sign the completed form as well.
6. All completed Site Inspection Reports and Responsive Action Logs must be kept with the SWPPP.

### Procedures

#### **Site Inspection Report**

7. You must record the following information on each and every Site Inspection Report:

**Site Name.** Insert the name that is recorded on the Notice of Intent.

**Permittee.** Enter the name that appears on the Applicable Permit or the Notice of Intent.

**Inspection Date.** Insert the date on which the inspection is being performed.

**Inspector.** Enter the name of the person performing the inspection.

**Weather conditions.** Circle the appropriate description that best describes current weather conditions.

**Type of Inspection.** Circle the inspection type that represents the purpose of the inspection. Only one inspection type may be circled. An inspection is required to be undertaken in each of the following circumstances: regular, applicable precipitation event, quarterly, or final prior to filing of the Notice of Termination.

**Construction Stage.** Briefly describe the type of Construction Activities occurring, e.g. initial grading, vertical construction, stabilization activities, etc.

**Status of Each Sedimentation Basin.** Describe the level and condition of each sedimentation basin and note the date of the last maintenance activities for that basin.

### **Questions**

1. You must respond to all of the following questions on each and every Site Inspection Report.
2. You must check "Yes," "No," or "N/A" for each question.
3. If you check "No" for any question (other than for Question C), you must provide a reference number under the "Responsive Action Log Reference #" column for each Action Item. Reference numbers have a letter and a number. The first character matches the letter designation of the applicable question. The second character is numerical starting with number 1. Responsive Action reference numbers shall be successive thereafter as to the numerical portion, for example, E-1, E-2, etc.

# Site Inspection Report

Site name: \_\_\_\_\_

Permitee: \_\_\_\_\_

Inspection Date: \_\_\_\_\_ Inspector: \_\_\_\_\_

Weather Conditions (Circle One):    Dry    Rain    Snow    Icy    Date of Last Rain Event: \_\_\_\_\_

Inspection Type (Circle One):            Regular            Precipitation    Quarterly            Final

Construction Stage: \_\_\_\_\_

Status of Each Sedimentation Basin: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

General		Yes	No	N/A	Responsive Action Log Reference #(s)
A.	Are the Applicable Permit and SWPPP on Site?				
B.	Is contact information provided on Site?				
C.	Have there been any Federal or State Inspections since the last inspection?				
D.	Was the Site Inspection Report for last Inspection signed by the Site Storm Water Compliance Manager?				
E.	Have Responsive Actions from the last Site Inspection been timely addressed?				
Maintenance					
F.	Are there excess sediment or other pollutants existing at the Site?				
G.	Are roads/gutters free of excessive sediment from the Site?				
H.	Are exit/entrance controls properly located, in working condition, and no repairs necessary?				
I.	Are exposed areas stabilized as required?				
J.	Are stockpiles located and stabilized as required?				

General		Yes	No	N/A	Responsive Action Log Reference #(s)
K.	Are BMPs properly located, in working condition, and no repairs necessary?				
L.	Are washouts properly located, in working condition, and no repairs necessary?				
M.	Are non-storm water and hazardous materials managed as required?				
N.	Are trash, construction debris, and other solid wastes managed as required?				
O.	Are portable toilets provided and properly located?				
P.	Are the Site BMPs and the SWPPP consistent with each other?				

## Responsive Action Log

Responsive Action Log Reference #(s)	Responsive Action	Date Noted	Date Responsive Action Completed	Initials

Inspection Conducted By:

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Company: \_\_\_\_\_

Date: \_\_\_\_\_

**I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.**

Site Storm Water Compliance Manager:

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Company: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX D: QUARTERLY COMPLIANCE REVIEW FORM

## Quarterly Compliance Review

Site Name: \_\_\_\_\_ Permittee: \_\_\_\_\_

Date of Inspection: \_\_\_\_\_ Site Inspected By: \_\_\_\_\_

Site Storm Water Compliance Manager: \_\_\_\_\_ Initial after Review: \_\_\_\_\_

Company Storm Water Compliance Manager: \_\_\_\_\_ Initial after Review: \_\_\_\_\_

### Physical Condition of the Site and BMPs

Is there a compliance issue(s) related to the physical condition of the Site or BMPs?  
(circle one) **Y** or **N**

If applicable, describe the recommended action(s) to address the issue(s):

### Adequacy of the SWPPP and Record Keeping Procedures

Are the SWPPP and the record keeping procedures adequate? (circle one) **Y** or **N** If no, describe any inadequacies.

If applicable, describe the recommended action(s) to address the issue(s):

Contractor Compliance with Storm Water Requirements
---

Is there a compliance issue(s) related to Contractor compliance with Storm Water Requirements? (circle one) <b>Y</b> or <b>N</b>
---

If applicable, describe the recommended action(s) to address the issue(s):
--

Number of Responsive Actions not Performed in the Time and Manner Required by the Applicable Permit
--

Is there a compliance issue(s) related to the number of Responsive Actions not performed in the time and manner required by the Applicable Permit? (circle one) <b>Y</b> or <b>N</b>
---

If applicable, describe the recommended action(s) to address the issue(s):
--

Recurring Compliance Issues at the Site
---

Is there a recurring compliance issue(s) related to storm water management at the Site? (circle one) <b>Y</b> or <b>N</b>
--

If applicable, describe the recommended action(s) to address the issue(s):
--

Site Name: \_\_\_\_\_ Permittee: \_\_\_\_\_

Site Storm Water Compliance Manager: \_\_\_\_\_ Initial after Review: \_\_\_\_

Company Storm Water Compliance Manager: \_\_\_\_\_ Initial after Review: \_\_\_\_

Date of Inspection and Responsive Action Log Reference No.	Failure to perform or document Pre-construction Inspection and Review	Discharge of Pollutants or Water/Contaminants to a Jurisdictional Water after commencement of Construction Activities without a Permit (# of days of discharge)	Failure to Perform or Document (or both) a Site Inspection as Required	Failure to take a Responsive Action within the time period allowed by the Applicable Permit, or failure to record the relevant information as required(or both)	Total number of Responsive Actions identified at the Site	Failure to perform or document (or both) a Quarterly Compliance Inspection and/or Review as required	Failure at time of Site Inspection by Permittee to have the SWPPP available	Failure at the time of Inspection by Permittee to provide contact information as required
Total:								

## APPENDIX E: COMPLIANCE SUMMARY REPORT

# Compliance Summary Report

Date: \_\_\_\_\_

Covered Period (check one): Sept. 1-Jan 31 \_\_\_\_ or Feb 1-Aug. 31 \_\_\_\_

Company	Site Name	Failure to perform or document Pre-construction Inspection and Review	Discharge of Pollutants or Water/Contaminants to a Jurisdictional Water after Commencement of Construction Activities without a Permit (# of days of discharge)	Failure to Perform or Document (or both) a Site Inspection as Required	Failure to take a Responsive Action within the time period allowed by the Applicable Permit, or failure to record the relevant information as required(or both)	Failure to perform or document (or both) a Quarterly Compliance Inspection and/or Review as required	Failure at time of Site Inspection by Permittee to have the SWPPP available	Failure at the time of inspection by Permittee to provide contact information as required

How does compliance in this six month period compare to the prior six month period (e.g., were there more instances of a particular violation, fewer of another, are there any detectable trends)?:

---

---

---

---

---

Are there any recurring Action Items? If so, describe actions to be taken in the next six month period to prevent their recurrence:

---

---

---

---

---

For the October 1 Report: Based on experience with the training program over the last year, should significant changes be made to the Training Program? (circle one) **Y** or **N**

If yes, provide proposed changes and the reasons for them:

---

---

---

---

---

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Company Storm Water Compliance Officer:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

**APPENDIX F: RELEASE BY HOMEOWNERS**

## RELEASE

Conditioned on payment of One Hundred Thousand Dollars (\$100,000.00) to The Harbors at Lake Chesterfield Homeowners Association, a non-profit Missouri corporation, by JMB No. 2, LLC, a Missouri limited liability corporation, ten days after the judicial approval of a consent decree between JMB No. 2, LLC and the United States, the State of Missouri and the City of Wildwood, Missouri in the United States District Court for the State of Missouri, United States, et al. v. J.H. Berra Holding Co., Inc., et al. (E.D. Mo.) ("Consent Decree"), expected to be hereinafter filed, and then, upon occurrence of such event, the undersigned does hereby FULLY, FINALLY, AND FOREVER release, acquit and discharge the JMB No. 2, LLC, J.H. Berra Holding Co., Inc., JHB Properties, Inc., J.H. Berra Construction Co., Inc. (collectively "Berra Entities"), and the City of Wildwood, Missouri, and their officers, officials, members (in their capacity as members of an otherwise released party), agents and employees from any and all claims, demands, actions, causes of action or other liabilities and/or damages, whether known or unknown, as the undersigned, or its officers, employees, members or assigns may have through the undersigned, as of the date hereof relating to damages or claims for restoration of the upper or lower Lake Chesterfield due to sedimentation or discoloration, or the effects thereof, caused by the upstream land disturbance activities. This release shall further include and release any claim of any interest in a certain security fund of \$250,000.00, posted by JMB No. 2, LLC and held by the City of Wildwood in the form of a letter of credit, relating to such upstream land disturbance activities, and the undersigned waives any objection to the release of such security fund by the City of Wildwood. The Berra Entities, individually and collectively, hereby release, acquit and discharge the Harbors at Lake Chesterfield Homeowners Association, and their officers, officials, agents, homeowners and employees from any and all claims, demands, actions, causes of action or other liabilities and/or damages, whether known or unknown, as the undersigned, or its officers, employees, members or assigns may have through the undersigned, as of the date hereof. The Berra Entities, individually and collectively, hereby release, acquit and discharge the City of Wildwood, and its officers, officials, agents and employees from any and all claims, demands, actions, causes of action or other liabilities and/or damages arising out of or related to the Enclaves at Cherry Hill, whether known or unknown, as the undersigned, or its officers, employees, members or assigns may have through the undersigned, as of the date hereof.

PAGE ONE OF THREE OF RELEASE

Signed and sealed this 28<sup>th</sup> day of June, 2007  
THE HARBORS AT LAKE CHESTERFIELD  
HOMEOWNERS ASSOCIATION

James J. Holman  
By: Trustee

Mary Lou Long  
By: Trustee

Sean Zawala  
By: Trustee

James P. Waskow  
By: Trustee

Lee R. Wetmore  
By: Trustee

D. Schroeder  
By: Trustee

Frank A. Colby  
By: Trustee

[Signature]  
By: Trustee

State of Missouri )

County of St. Louis ) ss

On this 27<sup>th</sup> day of June, 2007, before me personally appeared The above Trustees  
known to me to be the person(s) described herein, and who executed the foregoing instrument  
voluntarily.

SEAL Arline M. McCubbin

Notary Public

My Commission Expires: 1/5/08

PAGE TWO OF THREE OF RELEASE

ARLINE M. McCUBBIN  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County

My Commission Expires January 5, 2008

JMB No. 2, LLC,

By: [Signature]

J.H. Berra Holding Co., Inc.,

By: [Signature]

JHB Properties, Inc.,

By: [Signature]

J.H. Berra Construction Co., Inc.,

By: [Signature]

State of Missouri )

) ss

County of St. Louis )

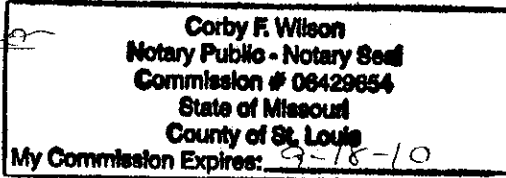
On this 11 day of June, 2007, before me personally appeared John H. Berra Jr. known to me to be the person(s) described herein, and who executed the foregoing instrument voluntarily.

SEAL [Signature]

Notary Public

My Commission Expires: 7-18-10

PAGE THREE OF THREE OF RELEASE



## APPENDIX G: DISMISSAL STIPULATION

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

JMB NO. 2, L.L.C.,	)	
	)	
Plaintiff,	)	
	)	Cause No. 04CC-000563
v.	)	
	)	Division 31
PATRICIA A. THIBEAULT, et al.,	)	
	)	
Defendants.	)	

**STIPULATION OF DISMISSAL OF ALL REMAINING CLAIMS  
AND VACATING “JUDGEMENT, ORDER AND DECREE” DATED FEBRUARY 27, 2004**

COME NOW the parties and hereby notify this Court that a settlement has been reached as to all the issues in this case as set forth more particularly in a Consent Decree executed by JMB No. 2, LLC (“JMB”) and the United States, State of Missouri and City of Wildwood, Missouri (“City”).

Pursuant to the terms of such Consent Decree, the Court hereby vacates in all respects the Judgment, Order and Decree dated February 27, 2004 issued by this Court, and JMB hereby dismisses with prejudice Counts I and II of JMB’s Verified Petition, Defendants hereby dismiss with prejudice Counts II and IV of Defendants’ Amended Counterclaim, and Defendants hereby dismiss without prejudice Defendants’ Counts I and III of City’s Amended Counterclaim.

Except as otherwise set forth in the Consent Decree, all parties agree to bear their own costs and attorneys fees incurred in this litigation.

HUSCH & EPPENBERGER, LLC

CUNNINGHAM, VOGEL & ROST, P.C.

By: \_\_\_\_\_

Caroline L. Hermeling #33998  
190 Carondelet Plaza, Ste. 600  
St. Louis, Missouri 63105  
(314) 480-1500  
(314) 480-1505 Facsimile

*Attorneys for Plaintiff/Counterclaim  
Defendant JMB No. 2, L.L.C.*

By: \_\_\_\_\_

Daniel G. Vogel, #39563  
Emily Rushing Kelly, #51809  
75 West Lockwood, Ste. One  
St. Louis, Missouri 63119  
(314) 446-0800  
(314) 446-0801 Facsimile

*Attorneys for Defendants/Counterclaim  
Plaintiff*

So Ordered:

\_\_\_\_\_